

UK EMISSION TRADING SCHEME INSTRUMENT 2021

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 Rules);
 - (b) section 96 (Obligations of issuers of listed securities);
 - (c) section 137A (The FCA’s general rules);
 - (d) section 137T (General supplementary powers);
 - (e) section 139A (Power of the FCA to give guidance);
 - (f) section 226 (Compulsory jurisdiction);
 - (g) paragraph 13 (FCA’s rules) of Schedule 17;
 - (h) section 293 (Power to make notification rules in respect of recognised bodies);
 - (i) section 395 (The Authority’s procedures);
 - (j) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
 - (2) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- C. The Financial Conduct Authority consents to and approves the rules and guidance and standard terms made and amended and fixed and varied by the Financial Ombudsman Service Limited, as set out at paragraph D below.

Powers exercised by the Financial Ombudsman Service

- D. The Financial Ombudsman Service Limited makes and amends the rules and guidance for the voluntary jurisdiction, and fixes and varies the standard terms for voluntary jurisdiction participants, as set out in Annex K of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17;
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (4) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17.

- E. The making and amendment of the rules and guidance and the fixing and varying of the standard terms, as set out at paragraph D above, by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Amendments to the Handbook

- F. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Training and Competence sourcebook (TC)	Annex D
Fees manual (FEES)	Annex E
Interim Prudential Sourcebook for Investment Businesses: (IPRU-(INV))	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Market Conduct sourcebook (MAR)	Annex H
Supervision manual (SUP)	Annex I
Decision Procedure Penalties manual (DEPP)	Annex J
Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Recognised Investment Exchange sourcebook (REC)	Annex L
Listing Rules sourcebook (LR)	Annex M

Amendments to material outside the Handbook

- G. The following materials listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
The Enforcement Guide (EG)	Annex N
The Perimeter Guidance manual (PERG)	Annex O

Commencement

- H. This instrument comes into force on 30 April 2021.

Citation

- I. This instrument may be cited as the UK Emission Trading Scheme Instrument 2021.

By order of the Board of the Financial Ombudsman Service Limited
27 April 2021

By order of the Board of the Financial Conduct Authority
29 April 2021

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>emissions allowances</i> are held in accordance with the <i>UK auctioning regulations</i> .
<i>auction regulation bidding</i>	the <i>regulated activity</i> of <i>bidding in emissions auctions</i> where it is carried on by a <i>firm</i> that is an <i>exempt MiFID commodities firm</i> .
<i>bidding in emissions auctions</i>	the <i>regulated activity</i> , specified in article 24A of the <i>Regulated Activities Order (Bidding in emissions auctions)</i> , which is in summary the reception, transmission or submission of a bid at an auction of an <i>emissions auction product</i> conducted on an auction platform.
<i>emissions auction product</i>	the <i>investment</i> specified in article 82A of the <i>Regulated Activities Order</i> (Greenhouse gas emissions allowances), which is in summary an <i>emissions allowance</i> offered for sale on an auction platform.
<i>exit strategy</i>	in accordance with regulation 23(3) of the <i>UK auctioning regulations</i> , one or more documents setting out detailed measures to ensure a smooth transition from an exiting <i>RAP</i> to its successor.
<i>exempt MiFID commodities firm</i>	a <i>firm</i> to which the exemption in Schedule 3 paragraph 1(k) to the <i>RAO</i> applies.
<i>MiFID business bidding</i>	the <i>regulated activity</i> of <i>bidding in emissions auctions</i> on own account or on behalf of clients where, in relation to a <i>financial instrument</i> , it is carried on by a <i>MiFID investment firm</i> (other than a <i>collective portfolio management investment firm</i>).
<i>RAP</i>	a <i>recognised auction platform</i> .
<i>RAP recognition requirements</i>	<ol style="list-style-type: none">(1) (in relation to a <i>RAP</i>) any of the requirements applicable to a <i>RAP</i> under the <i>RAP regulations</i>, <i>UK auctioning regulations</i> or <i>MiFIR</i> and the <i>UK</i> version of any <i>EU regulation</i> under <i>MiFID</i> or <i>MiFIR</i>, which is part of <i>UK</i> law by virtue of the <i>EUWA</i>.(2) (in relation to a <i>UK RIE</i> applying for recognition as a <i>RAP</i>) any of the requirements under the <i>RAP regulations</i>, the <i>UK</i>

auctioning regulations or *MiFIR* and the *UK* version of any *EU regulation* adopted under *MiFID* or *MiFIR* which is part of *UK* law by virtue of the *EUWA* and 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>trading scheme order 2020</i>	the Greenhouse Gas Emissions Trading Scheme Order 2020.
<i>two-day emissions spot</i>	the <i>investment</i> specified in article 82A of the <i>Regulated Activities Order</i> (Greenhouse gas emissions allowances), which is in summary an <i>emission allowance</i> offered for sale on an auction platform.
<i>UK auctioning regulations</i>	the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.

Amend the following definitions as shown.

<i>branch</i>	(a)	...
		...
	(h)	deleted <u>(in relation to a person carrying on <i>auction regulation bidding</i>) a branch.</u>
		...
<i>competent authority</i>	(1)	...
	(2)	(in relation to the exercise of the <i>overseas financial stability information power</i>) a competent authority for the purposes of the <u><i>UK auctioning regulations</i> or the <i>UK</i> provisions which implemented the relevant <i>Single Market Directive</i>.</u>
		...
<i>complaints investigator</i>	(1)	...
		...
	(3)	deleted <u>(in relation to a <i>RAP</i>) the independent <i>person</i> appointed under arrangements referred to in regulations 22 and 23 of the</u>

RAP regulations to investigate a complaint and to report on the result of his investigation to that RAP and to the complainant.

designated investment

- (1) a security or a contractually based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract) specified in Part III of the *Regulated Activities Order* (Specified Investments):

(a) ...

...

(hb) ~~{deleted}~~ emissions auction product (article 82A);

...

designated investment business

any of the following activities, specified in Part II of the *Regulated Activities Order* (Specified Activities), which is carried on by way of business:

(a) ...

...

(ba) ~~{deleted}~~ MiFID business bidding (part of bidding in emissions auctions) (article 24A);

...

emission allowance

- (1) ~~an 'allowance', within the meaning of article 3(a) of the *Emission Allowance Trading Directive*~~ an allowance consisting of any units recognised for compliance with Directive 2003/87/EC (Emission Trading Scheme) or created under article 18 of the *trading scheme order 2020*, as specified in paragraph (11) of Part 1 of Schedule 2 to the *Regulated Activities Order*;

- (2) (in relation to MiFID business other than in MAR 10 (Commodity derivative position limits and controls and position reporting)) the investment, specified in article 82B of the *Regulated Activities Order* ('Emission Allowances'), which is in summary emission allowances:

(a) consisting of any units recognised for compliance with the *Emission Allowance Trading Directive* or the *trading scheme order 2020*; and

(b) to which article 82B(2) of the *Regulated Activities Order* ~~applies~~ relates; and

- (3) (in MAR 10 (Commodity derivative position limits and controls and position reporting)); in addition to (1)

- (a) ~~an allowance consisting of any units recognised for compliance with Directive 2003/87/EC (Emission Trading Scheme), as specified in paragraph (11) of MiFID Part 1 of Schedule 2 to the Regulated Activities Order; or~~
 - (b) any derivative of such an allowance, whether falling under paragraph (4) or (10) of Part 1 of Schedule 2 to the *Regulated Activities Order*.
- energy market activity* (a) any *regulated activity* other than bidding in emissions auctions in relation to an *energy investment* or to *energy*, or in relation to a *biomass investment* or *biomass* that is ancillary to activities related to *energy investments* or *energy*, which:
- ...
- ...
- facilities* (in relation to a *recognised body*) the facilities and services which it provides in the course of carrying on *exempt activities*. References to the use of the facilities of an *RIE* or *RAP* are to be construed as follows:
- (a) dealings or transactions on an *RIE* or *RAP* are references to dealings or transactions which are effected by means of the *RIE's* or *RAP's* facilities or which are governed by the rules of the *RIE* or *RAP*;
 - (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.
- financial instrument* (1) (other than in (2) and (3)), those instruments specified in Part 1 of Schedule 2 to the *Regulated Activities Order*, that is:
- (a) ...
 - ...
 - (k) emission allowances consisting of any units recognised for compliance with the *Emission Allowance Trading Directive* and emission allowances created under article 18 of the trading scheme order 2020;
 - ...
- investment service* ...
- [Note: article 2(2) of *MiFIR* and regulation [5(8)] of the UK auctioning regulations]

<i>investment services and/or activities</i>	... [Note: article 2(2) of <i>MiFIR</i> and regulation [5(8)] of the <i>UK auctioning regulations</i>]
<i>market abuse</i>	(1) behaviour prohibited by: (a) ... (b) articles 38 to 41 of the <i>auction regulation</i>. [deleted]
<i>participant firm</i>	(1) a <i>firm</i> (including a <i>TP firm</i>) other than: ... (g) [deleted] <u>in respect of the carrying on of <i>bidding in emissions auctions</i>, an <i>exempt MiFID commodities firm</i></u>
<i>recognised body</i>	an <i>RIE</i> or <i>RAP</i>
<i>recognised body requirements</i>	... (2) (in relation to a <i>UK RIE</i>) the <i>MiFID/MiFIR</i> requirements; and (3) [deleted] <u>(in relation to a <i>RAP</i>) the <i>RAP recognition requirements</i></u> ; <u>and</u> (4) (in relation to any of the bodies specified in (1) and (2) <u>to (3)</u>) any other obligations imposed by or under the <i>Act</i> .
<i>recognition order</i>	(in accordance with section 313 of the <i>Act</i> (Interpretation of Part XVIII)) an order made under section 290 or 292 of the <i>Act</i> which declares an investment exchange to be an <i>RIE</i> <u>or (for <i>RAPs</i>) an order made under regulation 2 of the <i>RAP</i> regulations which declares a <i>UK RIE</i> to be a <i>RAP</i></u> .
<i>regulated activity</i>	(A) ... (B) in the <i>FCA Handbook</i> : (in accordance with section 22 of the <i>Act</i> (Regulated activities)) the activities specified in Part II of the (Specified activities), Part 3A (Specified activities in relation to information) and Part 3B (Claims management activities in Great Britain) of the <i>Regulated Activities Order</i> , which are, in summary: ...

- (ea) ~~[deleted]~~ bidding in emissions auctions (article 24A);
- ...
- ...
- 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 a *RAP*) under the *RAP recognition requirements*.
- relevant information* ...
- (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 *emissions auction products* and the terms on which they will be auctioned on a *RAP*.
- specified investment* (1) any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):
- (a) ...
- ...
- (oe) ~~[deleted]~~ emissions auction products (article 82A);
- ...
- ...
- securities and futures firm* a *firm* whose *permitted activities* include *designated investment business* or *bidding in emissions auctions*, which is not an *authorised professional firm*, *bank*, *BIPRU firm* (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an *exempt IFPRU investment firm*), *building society*, *collective portfolio management firm*, *credit union*, *friendly society*, *ICVC*, *insurer*, *media firm* or *service company*, whose permission does not include a *requirement* that it comply with *IPRU(INV) 5* (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f), (g) or (ga):
- ...
- (h) ~~[deleted]~~ a firm to which paragraph 1(k) of Schedule 3 to the *Regulated Activities Order* applies, whose *permitted activities* include *bidding in emissions auctions*.
- UK recognised body* a *UK RIE* or *RAP*.

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text.

3 Rules about application

3.1 Who?

- 3.1.1 R *PRIN* applies to every *firm*, except that it does not apply to a *firm* in relation to its carrying on of *auction regulation bidding*.

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

23 Senior managers and certification regime: Introduction and classification

...

23 Annex 1 Definition of SMCR firm and different types of SMCR firms

...

Part Seven: Exclusion from enhanced regime

...

7.4 R A *firm* is excluded from the enhanced regime if:

- (1) it is ~~exempt from MiFID under article 2(1)(j)~~ an exempt MiFID commodities firm; and
- (2) its only *permission* is *bidding in emissions auctions*.

...

27 Senior managers and certification regime: Certification regime

...

27.8 Definitions of the FCA certification functions

...

Client-dealing function

...

27.8.19 R Table: Activities covered by the client-dealing FCA certification function

Activity	Comments
...	

Annex D

(5) Acting as a ‘bidder’s representative’ in relation to <i>bidding in emissions auctions</i> .	Acting as a ‘bidder’s representative’ has the meaning in sub-paragraph 3 of article 6(3) of the <i>auction regulation</i> <u>regulation 5(5) of the <i>UK auctioning regulations</i></u> .
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Amendments to the Training and Competence sourcebook (TC)

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

App 1 TC Appendix 1

App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

1.1.1 R

Activity	Products/Sectors	Is there an appropriate qualification requirement?
<i>Designated investment business carried on for a retail client</i>		
...		
Dealing	13A
	...	
<u><i>MiFID business bidding</i></u>	<u>13C</u> {deleted} <u><i>emissions auction products</i></u>	<u>No</u>
...		

Annex E

Amendments to the Fees manual (FEES)

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

1 Fees Manual

1.1 Application and Purpose

...

Application

1.1.2 R This manual applies in the following way:

...

(3) *FEES* 1, 2 and 5 apply to:

- (a) every firm (except to the extent it is *bidding in emissions auctions*), fee-paying payment service provider and fee-paying electronic money issuer which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and

...

...

3. Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		

...

<p>(g) Any applicant for recognition as a <i>UK recognised body</i>; <u>(i) under section 287 of the Act, or</u> <u>(ii) under regulation 2(1) of the RAP regulations</u></p>	<p><i>FEES 3 Annex 3, part 1</i></p>	<p>On or before the date the application is made</p>
---	--------------------------------------	--

3 Annex 1R Authorisation fees payable

...

Part 2 – Complexity groupings not relating to *credit-regulated activities*

Straightforward cases

Straightforward cases	
Activity grouping	Description
...	
A.10	[deleted] <u>A firm to the extent it is bidding in emissions auctions</u>
...	

Moderately Complex Cases

Moderately Complex Cases	
Activity grouping	Description
...	
A.10	<u>Firms dealing as principal, except to the extent the firm is bidding in emissions auctions</u>
...	

...

3 Annex 3R Application fees payable in connection with Recognised Investment Exchanges and Recognised Auction Platforms

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

...

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

4.2.7K R Where the measure is not cumulative (e.g. the number of traders for fee-block A10), the *firm* must use the figure relating to the valuation date specified in *FEES* 4 Annex 1R Part 5 (e.g. 31 December for A10). Table A sets out the reporting requirements for the key fee-blocks when full actual data is not available:

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

Fee-block	Tariff base	Calculation where trading data are not available
...		
B. Recognised investment exchanges

B. {deleted} <u>Recognised auction platforms</u>	<u>Flat fee</u>	<u>Not applicable</u>
...		

...

Extension of Time

...

4.2.11 R Table of periodic fees payable to the *FCA*

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 6, part 1 for a UK RIE; and</i> <i><u>FEES 4 Annex 6R, part 1A for a UK RIE that is also a RAP</u></i>	(1) On or before the relevant dates specified in <i>FEES 4.3.6R</i> (2) If the event in column 4 occurs during the course of a <i>fee year</i> , 30 days after the occurrence of that event	<i>Recognition order is made.</i> The modified periodic fee is specified in <i>FEES 4 Annex 6R, Part 1.</i>
...			

4 Annex 1AR FCA activity groups, tariff bases and valuation dates

Part 1

This table shows how the *FCA* links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if:
...	
A.10 Firms dealing as principal	<p>its <i>permission</i> includes</p> <p>(a) <i>dealing in investments as principal</i>; <u>and/or</u></p> <p>(b) <i>bidding in emissions auctions</i>;</p> <p>BUT NOT if one or more of the following apply:</p> <p>...</p> <p>the <i>firm</i> is an <i>oil market participant, energy market participant</i> or a local (<u>except where the firm is bidding in emissions auctions</u>);</p> <p>...</p>
...	
B. Recognised investment exchanges	...
B [deleted] <u>Recognised auction platforms</u>	<u>it is a recognised auction platform.</u>
...	

Part 3

This table indicates the tariff base for each fee-block set out in Part 1.

...

Activity group	Tariff base
...	
A.10	NUMBER OF TRADERS
	...

	A <i>firm</i> may, as an option, report <i>employees</i> or agents as full-time equivalents (FTE), taking account of any part-time staff. In calculating the FTE, <i>firms</i> must take into account the total hours <i>employees</i> or agents have contracted to work for the <i>firm</i> and not the time <i>employees</i> or agents devote to the <i>dealing in investments as principal and bidding in emissions auctions</i> functions set out in fee-block A.10. Any figures using the FTE calculation to be recorded to one decimal place, rounded down to the nearest decimal place.
...	
B. Recognised investment exchanges	...
B {deleted} <u>Recognised auction platforms</u>	<u>Not applicable.</u>
...	

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2020 to 31 March 2021

Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of *FEES 4 Annex 1AR*.

...

Activity group	Fee payable	
...		
A.10	Band Width (No. of traders)	Fee (£/person)
	>1	6,805.33

	For <i>firms</i> carrying on <i>auction regulation bidding</i> , the fee in A.10 is calculated as above less 20% for each trader that carries on <i>auction regulation bidding</i> but not <i>MiFID business bidding</i> or <i>dealing in investments as principal</i> .
...	
B. Recognised investment exchanges	...
B. {deleted} <u>Recognised auction platforms</u>	{deleted} <u>57,124</u>
...	

Annex F

Amendments to the Interim Prudential Sourcebook for Investment Businesses: (IPRU-(INV))

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

3 Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms or Exempt IFPRU Commodities Firms

...

3-60 FIRMS TO WHICH RULES 3-61 TO 3-182 APPLY

Broad scope firms

- 3-60(1) R Rules 3-61 to 3-182 apply to a *broad scope firm* except that rules 3-80 to 3-178 do not apply to a *venture capital firm* or in respect of *bidding in emissions auctions* carried on by a *firm* that is an exempt MiFID commodities firm ~~exempt from MiFID under article 2(1)(j)~~.

...

PRIMARY REQUIREMENT

...

Absolute minimum requirement – General rule

- 3-72 R A firm's absolute minimum requirement is:
- ...
- (eb) for a *firm* that is ~~exempt from MiFID under article 2(1)(j)~~ an exempt MiFID commodities firm and whose *permitted activities* include *bidding in emissions auctions*: £50,000;

...

...

Appendix Glossary of terms for IPRU(INV) 3

1

...

associated business means business which is carried on in connection with *investment business*;

*bidding in emissions
auctions*

the regulated activity, specified in article 24A of the
Regulated Activities Order (Bidding in emissions auctions),
which is in summary the reception, transmission or
submission of a bid at an auction of an *emissions auction
product* conducted on an auction platform.

...

*exchange traded margined
transaction*

means a *margined transaction* effected by a *firm* under the
rules of an *exchange* or an *approved exchange* or *clearing
house*

*exempt MiFID
commodities firm*

a *firm* to which the exemption in Schedule 3 paragraph 1(k)
to the *RAO* applies.

...

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 General application

...

1.1.1D G ...

Auction regulation bidding

1.1.1E R COBS 5 (Distance communications) applies to a *firm* in relation to its carrying on of *auction regulation bidding*.

...

Annex H

Amendments to the Market Conduct sourcebook (MAR)

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

1 Market Abuse

...

1.2 Market Abuse: general

...

Factors that may be taken into account in relation to behaviour prior to either a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a ~~prescribed auction platform~~ recognised auction platform

- 1.2.5 G The following factors may be taken into account in determining whether or not behaviour prior to a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a ~~prescribed auction platform~~ recognised auction platform contravenes prohibitions and obligations in the *Market Abuse Regulation* and are indications that it does:

- (1) if it is in relation to *financial instruments*:
 - (a) in respect of which a request for admission to trading on a *regulated market* or *MTF* is subsequently made; and
 - (b) if it continues to have an effect once an application has been made for the *financial instrument* to be admitted for trading, or it has been admitted to trading on a *regulated market* or *MTF*, respectively; or
- (2) if it is in relation to *financial instruments*:
 - (a) which are subsequently offered for sale on a ~~prescribed auction platform~~ recognised auction platform; and
 - (b) if it continues to have an effect once the *financial instruments* are offered for sale on a ~~prescribed auction platform~~ recognised auction platform.

...

10 Commodity derivative position limits and controls, and position reporting

...

10.4 Position reporting

...

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: classification of persons holding positions in commodity derivatives or emission allowances

10.4.4 R A *firm* must classify *persons* holding positions in *commodity derivatives* or *emission allowances* according to the nature of their main business, taking account of any applicable authorisation or registration, as:

...

- (5) in the case of *emission allowances*, operators with compliance obligations under the *Emission Allowance Trading Directive* or the trading scheme order 2020.

...

...

Annex I

Amendments to the Supervision manual (SUP)

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

10C FCA senior managers regime for approved persons in SMCR firms

...

10C What functions apply to what type of firm

Annex 1

...

Part Five: Functions applying to core firms

5.1 R (1) ...

(2) *Firms* in (1) are divided into the following categories for the purposes of this *rule*:

(a) ...

...

(d) a *UK SMCR firm* falling into SYSC 23 Annex 1 7.4R (a an exempt MiFID commodities firm whose only *permission* is *bidding in emissions auctions*).

...

12 Appointed representatives

...

12.2 Introduction

...

Business for which an appointed representative is exempt

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

(a) ...

- (aa) ~~[deleted]~~ bidding in emissions auctions (article 24A of the Regulated Activities Order) where that activity does not consist either of dealing on own account or the execution of orders on behalf of clients;

...

...

...

15 Notifications to the FCA

...

15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

- 15.3.11 R (1) A firm must notify the FCA of:

...

- (ea) ~~[deleted]~~ a breach of an applicable provision in the UK auctioning regulations; or

...

...

...

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

Reporting requirement

...

- 16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)	(2)	(3)	(4)
------------	------------	------------	------------

RAG number	Regulated Activities	Provisions containing:		
		applicable data items	reporting frequency/period	due date
...				
RAG 11 {deleted}	<i>bidding in emissions auctions</i>	<u>SUP 16.12.29AR</u>	<u>SUP 16.12.29AR</u>	<u>SUP 16.12.29AR</u>
...				

...

Regulated Activity Group 11

16.12.29 R {deleted} A *firm* must submit the form contained in SUP 16 Annex 32R (Bidding in emissions auctions return) annually within 30 *business days* from its *accounting reference date* unless it is an *exempt MiFID commodities firm* that did not carry on any *auction regulation bidding* during the year to which that form relates.

...

16 Annex 32R Bidding in emissions auctions return {deleted}

This annex consists only of one or more forms. Forms are to be found through the following address:

Bidding in emissions auctions return - SUP 16 Annex 32R

REP060

Bidding in emissions auctions return

A

1 Are you meeting your minimum capital requirement?

yes-no

2 In carrying on *bidding in emissions auctions*, have you complied throughout the reporting period, and are you currently compliant, with applicable requirements under the

yes-no

UK auctioning regulations and related rules in the Handbook?

Annex J

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

...

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

...

Recognised Auction Platforms Regulations 2011 [deleted]	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 5A</u>	where the <i>FCA</i> is <u>proposing or deciding to publish a statement censuring a <i>RAP</i>, or to impose a financial penalty on a <i>RAP</i></u>	<u>REC 2A.4</u>	<u>RDC</u>

...

6A The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition

6A.1 Introduction

...

6A.1.2 G ...

- (5) “disciplinary prohibition” refers to a temporary or permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of a *MiFID investment firm* (under section 123A(2)(a) and (3) of the *Act*) or a temporary prohibition on an individual directly or indirectly acquiring or disposing of *financial instruments* on ~~his or her~~ their own account or the account of a third party, (under section 123A(2)(b) of the *Act*) or a temporary prohibition on an

individual directly or indirectly making a bid at an auction conducted by a *recognised auction platform*, on their own account or the account of a third party (under section 123A(2)(c) of the *Act*).

...

Annex K

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

- 1 Treating complainants fairly**
- 1.1 Purpose and application**
- ...
- Application to firms
- ...
- 1.1.5 R This chapter does not apply to:
- ...
- (4) ~~{deleted}~~ complaints in respect of auction regulation bidding;
- ...
- ...
- 2 Jurisdiction of the Financial Ombudsman Service**
- ...
- 2.3 To which activities does the Compulsory Jurisdiction apply?**
- Activities by firms
- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:
- (1) *regulated activities* (other than *auction regulation bidding and administering a benchmark*);
- ...
- ...
- 2.5 To which activities does the Voluntary Jurisdiction apply?**
- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:
- ...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

(a) an activity (other than auCTION regulation bidding and administering a benchmark) carried on after 28 April 1988 which:

...

...

(c) activities, other than *regulated claims management activities* and activities ancillary to *regulated claims management activities*, which (~~on IP completion day at 30 April 2021~~) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

...

...

**2 Annex
1G**

Regulated Activities for the Voluntary Jurisdiction ~~on IP completion day at 30 April 2021~~

This table belongs to *DISP 2.5.1R*

The activities which were covered by the *Compulsory Jurisdiction* (~~on IP completion day at 30 April 2021~~) were:

(1) for *firms*:

(a) *regulated activities* (other than auCTION regulation bidding and administering a benchmark);

...

...

The activities which (~~on IP completion day at 30 April 2021~~) were *regulated activities* were, in accordance with section 22 of the *Act* (*Regulated Activities*), any of the following activities specified in Part II and Parts 3A and 3B of the *Regulated Activities Order* (with the addition of auCTION regulation bidding and administering a benchmark):

...

...

Annex L

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

1 Introduction

1.1 Application

1.1.1 G (1) The *rules and guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *RIEs* under *Part XVIII* of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (as *RAPs*) under the *RAP regulations*.

...

...

1.1.2 G ...

(2) *UK RIEs* 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*~~ *MiFID/MiFIR requirements*. *RAPs* must satisfy the recognition requirements prescribed by the Treasury in the *RAP regulations*, under the *UK auctioning regulations* and must also be *UK RIEs* and so are subject to the *MiFID/MiFIR requirements*. *ROIEs* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).

...

1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* are set out, with *guidance*, in *REC 2*. The *RAP recognition requirements* (other than requirements under the *UK auctioning regulations* which are not reproduced in *REC*) are set out, with *guidance*, in *REC 2A*.

...

...

1.2 Purpose, status and quotations, notes or references

...

Quotations

- 1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, the *RAP regulations*, the *Companies Act 1989* 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 (1) This chapter contains the *recognition requirements* for *UK RIEs* (other than *RAPs*) and sets out *guidance* on those requirements.

...

- 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 *ROIEs* is set out in *REC 6 (Overseas Investment Exchanges)*.*

...

Insert the following new chapter, REC 2A, after REC 2 (Recognition requirements). The text is not underlined.

2A Recognised Auction Platforms

2A.1 Introduction

- 2A.1.1 G This chapter applies to a *RAP* or to a *UK RIE* applying to become a *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 a *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 a *RAP*. For example, a *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

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

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

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

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

(3) Where [a *RAP*] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by these [*RAP regulations*] on the [*RAP*] or applicant to satisfy the [*RAP recognition requirements*], but it is in addition [a *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 a *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.2.1UK*). The *FCA* will not make a separate assessment of compliance with the *recognition requirements* during the course of examining an application to become a *RAP* or as part of its ongoing supervision of a *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 a *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 a <i>RAP</i>	Column B Modification to <i>REC 2</i> guidance for a <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 resources)		Reg 14
<i>REC 2.4.3G</i> to <i>REC 2.4.6G</i> (Suitability)	In addition to the matters set out in <i>REC 2.4.3G</i> to <i>REC 2.4.6G</i> , 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
<i>REC 2.5.3G</i> to <i>REC 2.5.20G</i> (Systems and controls and conflicts) and <i>REC 2.5A</i> (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg 16 and 17(2)(f)
<i>REC 2.6.26G</i> to <i>REC 2.6.34G</i> (Safeguards for investors)		Reg 17
<i>REC 2.7.3G</i> to <i>REC 2.7.4G</i> (Access to facilities)	The <i>FCA</i> shall have regard to whether a <i>RAP</i> provides access to bid at auctions only to those <i>persons</i> eligible to apply for admission to bid under regulation 16 of the <i>UK auctioning regulations</i> .	Reg 17(2)(a) and 20

<p><i>REC 2.8.3G to REC 2.8.4G</i> (Settlement and clearing services)</p>		<p>Reg 17(2)(d) and 21</p>
<p><i>REC 2.9.3G to REC 2.9.4G</i> (Transaction recording)</p>		<p>Reg 17(2)(e)</p>
<p><i>REC 2.10.3G to REC 2.10.4G</i> (Financial crime and market abuse)</p>		<p>Reg 17(2)(g)</p>
<p><i>REC 2.11.3G to REC 2.11.4G</i> (Custody)</p>	<p><i>REC 2.11.4G</i> is replaced with the following for a <i>RAP</i>:</p> <p>Where a <i>RAP</i> arranges for other <i>persons</i> to provide services for the safeguarding and administration services of assets belonging to users of its <i>facilities</i>, it will also need to satisfy the <i>RAP recognition requirement</i> in regulation 17(2)(h) of the <i>RAP regulations</i> (see <i>REC 2A.2.1UK</i>).</p>	<p>Reg 17(2)(h)</p>
<p><i>REC 2.12.1G to REC 2.12.2G</i> (Availability of relevant information)</p>	<p><i>REC 2.12.1G to REC 2.12.2G</i> are replaced with the following for a <i>RAP</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>emissions auction products</i> the <i>FCA</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>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</p>	<p>Reg 17(2)(c)</p>

	<p>such a way as to facilitate or encourage <i>market abuse</i>.</p> <p><i>REC 2.12.2G</i></p> <p>A <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>	
<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> (Rules and consultation)		Reg 19
<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

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.

Amend the following as shown.

3 Notification rules for UK recognised bodies

3.1 Application and purpose

Application

...

- 3.1.3A G ~~{deleted}~~ The notification rules in this chapter which apply to a *RAP* are without prejudice to notification rules which apply to a *UK RIE* which operates the *RAP*. However, a *UK RIE* which operates a *RAP* may make a single notification where a notification is required both in its capacity as a *UK RIE* and a *RAP*.

...

3.4 Members of the management body and internal organisation

Purpose

...

3.4.4A R The following information is specified for the purposes of *REC* 3.4.2AR:

- (1) ...
- (2) ~~his or her~~ their date of birth;
- (3) where applicable, a description of the responsibilities which ~~he or she~~ they will have in the post to which ~~he or she is~~ they are to be appointed or elected, including for a UK RIE which operates a RAP where the person has responsibilities both in the UK RIE and RAP, a description of the responsibilities ~~he or she has~~ they have in respect of each body;
- (4) where applicable, a description of the responsibilities in the post from which ~~he or she~~ they resigned or otherwise ceased to act, including for a UK RIE which operates a RAP where the person had responsibilities both in the UK RIE and the RAP, a description of the responsibilities they had in respect of each body; and

...

...

3.13 Delegation of relevant functions

Application

...

3.13.1 G (1) The purpose of *REC* 3.13 is to enable the *FCA* to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as permitted under Regulation 6 of the *Recognition Requirements Regulations* or, in relation to a 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 *FCA* notice of that event, and:

...

- (2) inform the *FCA* of the reasons why it is satisfied that it will continue to meet the *recognition requirements* or (for a *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 *FCA* 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 trading venue

...

Operation of a recognised auction platform

- 3.14A.6 G ~~{deleted}~~ If a *UK RIE* proposes to operate a *RAP*, it will need to make a separate application to be recognised as a *RAP* (see *REC 5 (Applications)*)
- 3.14A.6A G In accordance with regulation 23(3) of the *UK auctioning regulations*, a *RAP* must submit a detailed exit strategy to the *FCA* within three months from the date of its appointment.
- 3.14A.6B G For the form and method of notifications *REC 3.2.2R* applies.

...

3.15 Suspension of services and inability to operate facilities

Purpose

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

...

- (3) ~~{deleted}~~ REC 3.15.8R provides for notification to the FCA where a RAP has to cancel an auction in specified circumstances.

...

Recognised auction platforms - cancellation of auctions

- 3.15.8 R ~~{deleted}~~ Where a RAP has to cancel an auction in the circumstances set out in regulation 11 of the UK auctioning regulations, it must immediately give the FCA notice of that cancellation.

...

3.18 Membership

- 3.18.1 G (1) The purpose of REC 3.18 is to enable the FCA to monitor changes in the types of *member* admitted by *UK recognised bodies* and to ensure that the FCA 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 a *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 a *RAP*) *RAP recognition requirements* can be met. In the case of investment firms and credit institutions, only UK entities will be eligible to bid on a RAP.

...

- 3.18.2 R ...

...

- (3) ~~{deleted}~~ (in relation to a 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 of the RAP regulations (Access to auctions) which applies to it.

- 3.18.3 R ...

- (2) the name of any regulatory authority in that jurisdiction which regulates that *member* in respect of activities relating to specified investments or (for a RAP) relating to emissions 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 a RAP) the RAP recognition requirements which apply to it.

...

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

...

- 3.22.2 G ~~{deleted}~~ Where a RAP proposes to impose a maximum bid size or take other remedial measures to mitigate risks of market abuse, financial crime or anti-competitive behaviour, the RAP must give the FCA notice of that event and details of the remedial measures proposed, in accordance with regulation 40 of the UK auctioning regulations.

...

3.24 Transfers 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 a RAP) over the management of the RAP, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:

...

...

3.25 Significant breaches of rules and disorderly trading conditions

- 3.25.1 R A *UK RIE* and a RAP must immediately notify the *FCA* of:

...

...

Insert the following new section, REC 3.27, after REC 3.26 (Proposals to make regulatory provision). The text is not underlined.

3.27 RAP auction clearing price and adjustment of the auction calendar

- 3.27.1 G (1) In accordance with regulation 7(1)(a) of the *UK auctioning regulations*, the auction clearing price is the price of the bid at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned.
- (2) A *RAP* must decide on the methodology to determine the auction clearing price and the secondary market price in circumstances where the auction clearing price (determined in accordance with (1)) would be significantly below the price on the secondary market prevailing during and immediately before the bidding window, taking into account the short-term volatility of the price of allowances over a defined period preceding the auction. In determining that methodology, the *RAP* must treat the price of the bid which matches or exceeds the secondary market price as the auction clearing price (regulations 7(1)(b), 7(2) and 7(4) of the *UK auctioning regulations*).
- (3) In accordance with regulation 7(4) of the *UK auctioning regulations*, a *RAP* is required to notify the *FCA* the methodology in (2) before an auction is started.
- (4) In accordance with regulation 7(6) of the *UK auctioning regulations*, a *RAP* is required to notify the *FCA* without delay if, in between two bidding windows, it modifies the methodology in (2).
- (5) The notifications referred to in *REC* 3.27.1G(3) and (4) should be undertaken in accordance with *REC* 3.2.2R.
- 3.27.2 G In accordance with regulation 10(2) of the *UK auctioning regulations*, where the manner in which a modification to the auction calendar is to be implemented is not provided for in the *UK auctioning regulations*, a *RAP* may not implement that modification until it has consulted the *FCA*. The notification should be undertaken in accordance with *REC* 3.2.2R.

Amend the following as shown.

4 Supervision

4.1 Application and purpose

...

Purpose

- 4.1.2 G This chapter sets out the *FCA*'s approach to the supervision of *recognised bodies* and contains *guidance* on:

...

- (2) the *FCA*'s approach to the exercise of its powers under:
- (a) (for *RIEs*) section 296 of the *Act* (Appropriate regulator'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*) section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations* to revoke *recognition orders* (*REC* 4.7);

...

...

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 a *RAP*) the *RAP*, whether directly or indirectly, as the *FCA* 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 a *RAP*) the *RAP*, whether directly or indirectly, publish such particulars of any such transfer as the *FCA* may reasonably require.

...

4.2C Control over a UK RIE

...

- 4.2C.2 G The *FCA* 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*.

...

4.4 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* (FCA's power to give directions) and (for *RAPs*) under regulation 3 of the *RAP regulations*, the *FCA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the *recognised body requirements*. In the case of a *UK RIE* (including one which operates a *RAP*) those steps may include granting the *FCA* access to the *UK RIE's* premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction.

...

- 4.6.3 G The *FCA* 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 *recognised body requirements* which has serious consequences;
- (2) compliance with the direction would ensure that one or more of the *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), the *FCA* need not follow the consultation procedure set out in the rest of section 298 (see *REC 4.8*) or may cut short that procedure, if it considers it reasonably necessary to do so. For *RAPs*, the *FCA* need not follow the procedure set out in regulation 5 of the *RAP regulations* or may cut short the procedure, if it considers it essential to do so.

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 *FCA* has the power to revoke a *recognition order* relating to a *recognised body*.
- ...
- 4.7.2A G ~~Where the *FCA* makes a revocation order under section 297 of the *Act* in relation to a *UK RIE* which is also a *RAP*, the *FCA* will also revoke the *recognition order* relating to its status as a *RAP*.~~
- 4.7.3 G The *FCA* will usually consider revoking a *recognition order* if:
- ...
- (2) it would not be possible for the *recognised body* to comply with a direction under section 296 of the *Act* (*FCA'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 *FCA* to give a direction under section 296 or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- ...
- (5) ~~in the case of a *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 *FCA* 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:
- ...
- (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
- ...
- ...
- 4.8 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 (*FCA'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) sets out procedures (see *REC* 4.8.9G) which the *FCA* 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:

- (a) in the case where the *FCA* proposes to make a direction under section 296, it considers it is reasonably necessary not to follow, or to cut short, the procedure (see *REC* 4.8.7G); or
- (b) (for *RAPs*) in a case where the *FCA* proposes to make a direction under regulation 3 of the *RAP regulations*, it considers it is essential not to follow, or to cut, short, the procedure.

...

- 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 *FCA* will have regard to all relevant information and factors including:

...

...

- 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 *FCA's* guidance about the actions it proposes to take in following these procedures, in the tables at *REC* 4.8.9G and *REC* 4.8.10G.

- 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 *FCA* will usually discuss its intention, and the basis for this, with the *members of the management body* 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.

Insert the following new provision, REC 4.8.10, after REC 4.8.9 (Key steps in the section 298 procedure). The new text is not underlined.

4.8.10 G For *RAPs*, key steps in the regulation 5 procedure

	The <i>FCA</i> will:	<i>Guidance</i>
(1)	give written notice to the <i>RAP</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the date by which representations should be made.
(2)	take such steps as it considers reasonably practicable to bring the notice to the attention of the <i>members</i> of the <i>RAP</i> or of the applicant, as the case may be;	The <i>FCA</i> will also notify <i>persons</i> individually (as far as it considers it reasonably practicable to do so) if it considers that the action it proposes to take would affect them adversely in a way which would be different from its effect on other <i>persons</i> of the same class.
(3)	publish the notice so as to bring it to the attention of other <i>persons</i> likely to be affected;	
(4)	receive representations from the <i>RAP</i> or applicant concerned, any <i>member</i> of the <i>RAP</i> or applicant, and any other <i>person</i> who is likely to be affected by the action the <i>FCA</i> proposes to take;	The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>person</i> concerned. It will normally only hear oral representations from the <i>RAP</i> (or applicant) itself or of a <i>person</i> whom it has notified individually, on request.
(5)	write promptly to any <i>person</i> who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>person</i> concerned further time to respond.
(6)	have regard to representations made;	
(7)	(when it has reached its decision) notify the <i>RAP</i> (or applicant) concerned in writing;	
(8)	(if it has decided to give a direction, or revoke or refuse to make a	The <i>FCA</i> will usually give notice of its decision to the same <i>persons</i> and in the

	recognition order) take such steps as it considers reasonably practicable to bring its decision to the attention of <i>members</i> of the <i>RAP</i> or applicant and to other <i>persons</i> likely to be affected.	same manner as it gave notice of its intention to act.
--	--	--

Amend the following as shown.

5 Applications for Recognition (UK recognised bodies)

5.1 Introduction and legal background

...

5.1.1A G ~~{deleted}~~ A UK RIE may apply to the FCA for recognition as a RAP under regulation 2 of the RAP regulations.

...

5.2 Application process

...

5.2.3 G An application should:

(1) be made in accordance with any directions the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* or (for RAPs) regulation 2 of the RAP regulations;

...

...

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

5.2.6 G Under section 289 of the *Act* (Applications: supplementary) or (for a RAP applicant) regulation 2 of the RAP regulations, the *FCA* 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 *FCA* 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 a RAP under subsection 290(1B) of the *Act* and (for a RAP applicant) regulation 2(8) of the RAP regulations, the application must be determined by

the *FCA* before the end of the period of six *months* beginning with the date on which it receives the completed application.

...

5.2.12 G Where the *FCA* considers that it is unlikely to make a *recognition order* 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 *FCA* 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 a *RAP*) regulation 5 of the *RAP regulations* and described in more detail in *REC 4.8*.

...

5.2.14 G 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>
...	
(3)	Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for a <i>RAP</i>) <u><i>auction platform</i></u> , settlement arrangements, clearing facilitation 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>emissions auction products</i> which it operates or plans to operate.</u>
...	
(18)	Details of membership selection criteria, rules and procedures, <u>including (for a <i>RAP</i>) details of how the rules of the <i>UK RIE</i> will change in order to reflect <i>RAP status</i>.</u>
...	

...

Sch 1 Record keeping requirements

Sch 1.1G G There are no record keeping requirements as such in *REC*.

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

RAPs also have separate record keeping obligations under the *UK auctioning regulations*.

Sch 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 *REC 3* (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 *UK auctioning regulations*).

...

Sch 2.2 G

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<u><i>RAPs</i></u>				
<u>Regulation 7(4) and 7(6) of the <i>UK auctioning regulations</i></u>	<u>Either a methodology or a modification to that methodology as specified by the <i>UK auctioning regulations</i></u>	<u>See <i>REC 3.27</i></u>	<u>Event concerned</u>	<u>Without delay</u>

Annex M

<u>Regulation 10(2) of the UK auctioning regulations</u>	<u>Adjustment to the auction calendar where the modification manner is not already provided for in the UK auctioning regulations</u>	<u>See REC 3.27</u>	<u>Event concerned</u>	<u>Without delay</u>
<u>Regulation 11 of the UK auctioning regulations</u>	<u>Cancellation of an auction in the circumstances set out in regulation 11 of the UK auctioning regulations</u>	<u>See REC 3.15</u>	<u>Event concerned</u>	<u>Without delay</u>
<u>Regulation 23(3) of the UK auctioning regulations</u>	<u>Submission of exit strategy</u>	<u>See REC 3.14A</u>	<u>Date of appointment as a RAP</u>	<u>Within 3 months from the date of appointment</u>
<u>Regulation 40 of the UK auctioning regulations</u>	<u>Restriction on maximum bid size or other remedial measures</u>	<u>See REC 3.22.2</u>	<u>Proposal to take action</u>	<u>Immediately</u>
<i>Notification rules for UK recognised bodies (see REC 3 (Notification rules for UK recognised bodies))</i>				
...				
REC 3.14	<u>Products, services and normal hours of operation or (for RAPs) the timing, frequency or duration of its</u>	<u>See REC 3.14</u>	<u>See REC 3.14</u>	<u>Immediately</u>

	<u>bidding windows</u>			
REC 3.14A	Operation of a <i>trading venue</i> or (for <i>RAPs</i>) <u>their exit strategy</u>	Details of proposal to operate a new <i>trading venue</i> or close an existing <i>trading venue</i> or (for <i>RAPs</i>) <u>their exit strategy</u>	Communication of proposal to <i>members</i> or shareholders or (for <i>RAPs</i>) <u>date of appointment</u>	Immediately or (for <i>RAPs</i>) <u>within 3 months from the date of appointment</u>
REC 3.15	Suspension of services and inability to operate <i>facilities</i> or (for <i>RAPs</i>) <u>the cancellation of an auction</u>	See REC 3.15	Event concerned	Immediately
...				
REC 3.18	Membership	Information regarding new types of <i>member</i> and reasons for considering the <i>recognition requirements</i> or (for <i>RAPs</i>) <u>the RAP recognition requirement in regulation 20 of the RAP regulations</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
...				
<u>REC 3.27</u>	For <i>RAPs</i> : <u>Auction clearing price methodology and manner to modify</u>	<u>See REC 3.27</u>	<u>Event concerned</u>	<u>Immediately</u>

Amendments to the Listing Rules (LR) sourcebook

In this Annex,

	<u>auction calendar</u>			
...				

underlining indicates new text and striking through indicates deleted text.

Appendix 1 Relevant definitions

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the listing rules are extracted from the *Glossary*.

...	
<i>specified investment</i>	any of the following <i>investments</i> specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments):
	...
	(oe) [deleted] <u><i>emissions auction product</i></u> (article 82A);
	...
...	

Annex N

Amendments to the Enforcement Guide (EG)

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

7 Financial penalties and other disciplinary sanctions

...

7.2 Alternatives to sanctions

7.2.1 The *FCA* also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:

...

(4a) [deleted]

(4b) where the *FCA* considers it necessary for the purpose of the exercise by it of functions under the *Market Abuse Regulation* or any supplementary market abuse legislation (as defined in Part 8 of the *Act*), the *FCA* may suspend the auctioning of a relevant auctioned product (as defined in section 122IA of the *Act*) at an auction conducted by a *recognised auction platform* under section 122IA of the *Act*;

...

...

11 Restitution and redress

...

11.5 Other relevant powers

...

11.5.2 The *FCA* may consider taking disciplinary action using a range of powers as well as seeking restitution, if a *person* has breached a relevant requirement¹³ of the *Act*, the *UK auctioning regulations* or any *onshored regulation*, or has engaged in *market abuse*.

¹³ Under section 204A(2), a 'relevant requirement' in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying provision specified, or of a description specified, for the purpose of section 204A(2) by the Treasury by

order or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in section 204A(3) of the *Act*.

...

19 Non-FSMA powers

...

19.14 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

...

19.14.3 The *Money Laundering Regulations* add to the range of options available to the *FCA* for dealing with anti-money laundering and anti-terrorist financing failures. These options include:

- to prosecute a relevant person, including but not limited to an authorised firm or an Annex I financial institution or an *auction platform*, a *cryptoasset exchange provider* or a *custodian wallet provider*, as well as any responsible officer;
- to fine or censure a relevant person, including but not limited to an authorised firm or an Annex I financial institution or an *auction platform*, a *cryptoasset exchange provider* or a *custodian wallet provider*, as well as any officer knowingly concerned in the breach, under regulation 76 of the *Money Laundering Regulations*;

...

...

19.25 ~~{deleted}~~ Recognised Auction Platforms Regulations 2011

19.25.1 The *FCA*'s policy for using the powers given to it by the *RAP Regulations* is set out in *REC*. This includes, for example, its policy in relation to the power to impose a financial penalty on or censure a *RAP* (*REC* 2A.4) and its policy in relation to the power to give directions to a *RAP* (*REC* 4.6).

...

Appendix 3 Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies

App 3.1 The FCA

...

3.1.4 The *FCA* has the power to take the following enforcement action:

...

- temporarily prohibit an individual from exercising management functions in *MiFID investment firms* or from dealing in *financial instruments* on their own account or on the account of a third party, under s.123A(2) of the 2000 Act;
- temporarily prohibit an individual from making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a *recognised auction platform* under s.123A(2) of the 2000 Act;

...

...

Annex O

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.6 Specified investments: a broad outline

...

Emission allowances

2.6.19D This *specified investment* comprises *emissions allowances* that are auctioned as *financial instruments* or *two-day emissions spots* (together, *emissions auction products*).

- (1) ~~There are two *specified investments* relating to the scheme for *emission allowance trading within the UK*:~~
 - (a) the first kind comprises *emission allowances* that are auctioned as *financial instruments* or *two-day emissions spots* (together, *emissions auction products*); and
 - (b) the second kind is an emission allowance itself subject to (2).
- (2) An *emission allowance* is only a *specified investment* specified if PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ MiFID business) applies.

...

2.6.19E G ~~The *emissions auction product specified investment* relates only to the *regulated activity* of *bidding in emissions auctions* (whereby a bid is received, transmitted and submitted on an *auction platform*) and captures the two forms of allowance products that may be auctioned under regulation 4(2) of the *UK auctioning regulations* or the *EU auction regulation*: a two-day spot or a five-day future.~~

2.6.19 F G ~~See PERG 2.7.6DG for more about:~~

- (1) how the *RAO* deals with the overlap between *emission allowances* and *emissions auction products*; and
- (2) whether these products are a *security*, a *contractually based investment* or a *relevant investment*.

2.6.19G G Some other points about *emission allowances* are:

- (1) *Emission allowance* means an allowance as defined in article 3(a) of Directive 2003/87/EC ~~which established the scheme for greenhouse gas emission allowance trading within the EU or created under article 18 of the *trading scheme order 2020*.~~ That article provides These provisions provide that an allowance is an allowance to emit one tonne of carbon dioxide equivalent during a specified period, only valid for the purpose of meeting the requirements of Directive 2003/87/EC or the *trading scheme order 2020* and only transferable in accordance with the provisions of that directive or order (*emission allowance*).
- (2) ~~{deleted}~~ A two-day spot is defined by reference to article 3(3) of the *EU auction regulation* or regulation 2 of the *UK auctioning regulations*. These provisions provide that a two-day spot is an allowance auctioned for delivery at an agreed date no later than the second trading day from the day of the auction (*two-day emissions spot*).
- (3) ~~{deleted}~~ A *financial instrument* is defined as any instrument listed in Part 1 of Schedule 2 to the *Regulated Activities Order*.
- (4) ~~{deleted}~~ The distinction between *emission allowances* that are auctioned as *financial instruments* and those auctioned as two-day spots is no longer relevant as all *emissions auction products* are *financial instruments*.

...

2.7 Activities: a broad outline

...

Bidding in emissions auctions

2.7.6B G ~~{deleted}~~ The *RAO* and the *UK auctioning regulations* together generate three broad categories of *person* in relation to bidding for *emission allowances on an auction platform*:

- (1) The first category consists of a *MiFID investment firm* (other than a *collective portfolio management investment firm*).
- (1A) The first category also consists of a *person* that is exempt from *MiFID* under article 2(1) (j), as onshored by Part 1 of Schedule 3 to the *RAO*, where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the article 2(1) (j) exemption from *MiFID* is in *PERG 13.5, Q44*).

- (1B) A person in this first category is entitled to bid on an auction platform but requires permission from the FCA for bidding in emissions auctions to do so.
- (2) The second category consists of operators or aircraft operators bidding on their own account as well as group entities or business groupings of those operators or UK public bodies or UK state-owned entities that control any of those operators (as set out in regulation 16 of the UK auctioning regulations). A person or entity in this category is entitled to bid on an auction platform but does not require permission from the FCA to do so as a result of an exclusion from the regulated activity of bidding in emissions auctions in article 24B of the RAO.
- (3) The third category consists of all other persons. The UK auctioning regulations prevent an auction platform from granting these persons admission to bid. A person in this category is not entitled to bid on an auction platform and the FCA is not able to grant such a person permission to do so.
- 2.7.6C G ~~{deleted}~~ A person may fall into both the first and the second category. For example, a person might be both exempt from MiFID under article 2(1)(j) (within the first category) and be a group entity of an operator (within the second category). In this case, that person does not require permission for activities that cause that person to fall into the second category because those activities are excluded from the activity of bidding in emissions auctions.
- 2.7.6D G (1) ~~{deleted}~~ As explained in PERG 2.6.19DG, an emission allowance and an emissions auction product are both specified investments. The Regulated Activities Order deals with this as follows.
- (2) ~~{deleted}~~ A person in the first category in PERG 2.7.6BG requires permission from the FCA for bidding in emissions auctions but does not require any other permission to do so.
- (3) ~~{deleted}~~ A person in the second category in PERG 2.7.6BG does not require any permission from the FCA for bidding.
- (4) ~~{deleted}~~ Article 24A(2) of the RAO is the main provision that deals with (2) and (3). It provides that bidding in emissions auctions does not form part of any other regulated activity and so a person seeking to carry on bidding activity will only require permission for bidding in emissions auctions to do so and will not require permission for any other regulated activities. Except for this exclusion, in the FCA's view, bidding in emissions auctions would broadly equate to the following regulated activities:

- (a) dealing in investments as principal;
 - (b) dealing in investments as agent;
 - (c) arranging (bringing about) deals in investments; or
 - (d) making arrangements with a view to transactions in investments.
- (5) An *emission allowance* is a *security*. This means that any *person* wishing to carry out any activity in relation to it will need to consider whether any of the *regulated activities* relating to *securities* apply (subject to (8)).
- (6) A derivative on an *emission allowance* is potentially a *contractually based investment* and a *relevant investment*. Therefore any *person* wishing to carry out any activity in relation to it will need to consider whether any of the *regulated activities* relating to *contractually based investments* and *relevant investments* apply (subject to (8)).
- (7) ~~{deleted}~~ An *emission allowance* auctioned under the UK auctioning regulations, as well as being a *specified investment* in its own right (an *emissions auction product*) may also be included in the *emission allowance* category of *specified investment* (subject to (8)). It is unlikely to be a *contractually based investment* or a *relevant investment*.
- (8) ~~{deleted}~~ However (as explained in (2) to (4)), for a *firm* that is bidding under the UK auctioning regulations:
- (a) the only *regulated activity* is *bidding in emissions auctions*; and
 - (b) the only *specified investment* is an *emissions auction product*.
- (9) ~~{deleted}~~ (7) means that a *person* may need *permission* to carry out activities in relation to *emission allowances* that are auctioned under the UK auctioning regulations other than *bidding activities*, such as:
- (a) buying and selling them in the secondary market; or
 - (b) advising a client about buying or selling them.
- (10) ~~{deleted}~~ Where (9) applies, the *specified investment* involved will be an *emission allowance* or one of the *contractually based investments*. The *emissions auction product* category of *specified investment* is only relevant to the *regulated activity* of *bidding in emissions auctions*.

- (11) ~~{deleted}~~ (9) applies to a *person* in (2) or (3) as well as anyone else wanting to carry out such activities.

...

2.8 Exclusions applicable to particular regulated activities

...

Dealing in investments as principal

- 2.8.4 G The *regulated activity of dealing in investments as principal* applies to specified transactions relating to any security or to any *contractually based investment* (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). The activity is cut back by exclusions as follows.

...

- (7) ~~{deleted}~~ An activity that might otherwise be both *dealing in investments as principal* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as principal* as a result of article 24A(2) of the *RAO* which provides that the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see *PERG 2.7.6DG*).

Dealing in investments as agent

- 2.8.5 G The *regulated activity of dealing in investments as agent* applies to specified transactions relating to any security or to any *relevant investment* (apart from rights under *funeral plan contracts* or rights to or interests in such rights). In addition, the activity is cut back by exclusions as follows.

- (1) ...

...

- (4) ~~{deleted}~~ An activity that might otherwise be both *dealing in investments as agent* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as agent* as a result of article 24A(2) of the *RAO* which provides that the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see *PERG 2.7.6DG*).

...

...

Arranging deals in investments and arranging a home finance transaction

...

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.

- (-1) ~~{deleted}~~ Under article 24A(2), an activity that would otherwise be both *arranging* and *bidding in emissions auctions* is specifically excluded from *arranging* because the activity of *bidding in emissions auctions* does not form part of any other regulated activity (see *PERG 2.7.6DG*).

...

...

2.9 Regulated activities: exclusions applicable in certain circumstances

2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) Each set of circumstances described in *PERG 2.9.3G* to *PERG 2.9.17G* has some application to several regulated activities relating to securities, *structured deposits*, *relevant investments* or *home finance transactions*. They have no effect in relation to the separate *regulated activities* of *accepting deposits*, *issuing electronic money*, *effecting or carrying out contracts of insurance*, *bidding in emissions auctions*, *advising on syndicate participation at Lloyd's*, *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* or *entering as provider into a funeral plan contract*.

...

...

...

2 Annex 2 Regulated activities and the permission regime

...

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on

...	
Activities of a dormant account fund operator	
...	
<u>Bidding in emissions auctions</u>	
(ac) [deleted] <u>bidding in emissions auctions</u>	<u>emissions auction products</u>
...	

3 Table

Notes to Table 1
...
<p><u>Note 1C:</u></p> <p><u>Although MiFID business bidding (part of bidding in emissions auctions) is designated investment business, it is not separately listed in this table under designated investment business because bidding in emissions auctions is already referred to above.</u></p>
...

13 Guidance on the scope of the UK provisions which implemented MiFID and CRD IV

...

13.4 Financial instruments

...

Emission allowances

Q34A. How are emission allowances treated?

They are covered in the following ways:

- Regulation 5(8) of the UK auctioning regulations deems as an investment service or activity the reception, transmission and submission of a bid for a financial instrument on an auction platform by a MiFID investment firm permitted to carry on these activities under the regulations.

- The UK auctioning regulations regulate bids for allowances in the form of two-day spot contracts or five-day futures.
- The UK auctioning regulations allow the following to bid:
 - aircraft operators and others referred to in (5) below;
 - MiFID investment firms (other than collective portfolio management investment firms) and UK credit institutions; and
 - a person exempt under article 2(1)(j) of MiFID as onshored in Part 1 of Schedule 3 to the RAO (see Q44 to Q45 for more on this exemption).
- An *emission allowance* is itself a financial instrument (C11).
- An option, future, swap, forward rate agreement or any other derivative contract relating to *emission allowances* is included as a C4 derivative.

It is not always clear how all this overlapping legislation fits together but in the FCA's view, it works like this (for ease of reference the phrase 'MiFID authorisation' is used to refer to UK requirements onshoring MiFID):

- (1) ~~{deleted}~~ An emission allowance auctioned as a five-day future or a two-day spot contract is regulated under either the EU auction regulation or the UK auctioning regulations.
- (2) The five-day future auction product is a financial instrument and is regulated under MiFID as onshored by Part 1 of Schedule 2 to the RAO. It is included under C4 and C11.
- (3) The two-day spot contract product is also a financial instrument. It is included under C11. It is therefore also regulated under MiFID as onshored by Part 1 of Schedule 2 to the RAO.
- (4) In the FCA's view an *emission allowance* (including when auctioned under the EU auction regulation or the UK auctioning regulations) will not come within C1.
- (5) ~~{deleted}~~ The UK auctioning regulations provide certain exemptions for aircraft operators and operators of plant and other installations. These exemptions continue to apply whether or not a MiFID exemption, as onshored in Part 1 of Schedule 3 to the RAO is available, but only for bidding activities covered by the UK auctioning regulations.
- (6) ~~{deleted}~~ Thus for example, regulation 16 of the UK auctioning regulations enable business groupings of operators in (5) to be eligible to apply for admission to bid. The MiFID exemption in (12) below

may not cover all such persons but they are still entitled to submit bids under the *UK auctioning regulations*.

- (7) ~~{deleted}~~ The mere fact of being exempt under MiFID, as onshored in Part 1 of Schedule 3 to the *RAO* does not allow someone to bid under the *UK auctioning regulations*. The *UK auctioning regulations* regulate who can and cannot bid.
- (8) ~~{deleted}~~ The *UK auctioning regulations* cover the reception, transmission and submission of a bid. This corresponds to the MiFID activities of the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and dealing on own account.
- (9) ~~{deleted}~~ Therefore the *UK auctioning regulations* activities of receiving, transmitting and submitting a bid are all also covered by MiFID, whether the *emission allowance* is auctioned as a five-day future or a two-day spot contract. However, a person exempt under (5) is not subject to MiFID when bidding (subject to (10)).
- (10) ~~{deleted}~~ If a person who is allowed to bid under the *UK auctioning regulations* or is authorised under MiFID (because for example it wants to carry out other activities for which it needs MiFID authorisation), MiFID will apply to its bidding activities.
- (11) The MiFID investment services and activities that apply to a product covered by the *UK auctioning regulations* are not limited to the bidding activities listed in paragraph (8) of this list. All the MiFID investment services and activities apply to *emission allowances* auctioned as a financial instrument. Therefore, for example, giving personal recommendations about emission allowances (including bids) is covered by MiFID. Anyone wishing to carry out such activities will need to be authorised as a MiFID firm, unless some other exemption is available.
- (12) Article 2.1(e) of MiFID as onshored in Part 1 of Schedule 3 to the *RAO* exempts an operator with compliance obligations under ~~Directive 2003/87/EC (Emissions Trading Scheme)~~ the *UK trading scheme* from MiFID.
 - (a) ~~{deleted}~~ The exemption covers some of the same ground as the exemption in the *UK auctioning regulations* described in (5) to (7) above. However this overlap neither extends nor narrows the effect of the *UK auctioning regulations* exemption.
 - (b) ~~{deleted}~~ The article 2.1(e) exemption also covers activities not covered by the *UK auctioning regulations*. So, for example, the article 2.1(e) exemption covers buying and selling the underlying *emission allowance* or the five-day future or two-day spot auction product in the secondary market.

(c) See the answer to Q35A for more details about the conditions of the exemption.

(13) Although third country investment firms cannot bid on an auction platform, an EU firm will be carrying on the regulated activity of bidding in emissions auctions if they bid from the UK on an EU auction platform.

...

13.5 Exemptions from MiFID

...

Q35A. Can you give me a complete list of exemptions?

Description of exemption	MiFID reference	Guidance in this chapter
...		
<p>An operator with compliance obligations under Directive 2003/87/EC (Emissions Trading Scheme) <u>the UK trading scheme</u> who, when dealing in emission allowances, does not:</p> <ul style="list-style-type: none"> • execute client orders; or • provide any investment services or perform any investment activities other than dealing on own account; or • apply a high-frequency algorithmic trading technique. 	article 2.1(e)	Q34A
...		

...

Q45. What is an ancillary activity for the purposes of the commodities exemption?

...

The asset classes are made up of emission allowances and various types of commodity derivatives. The emission allowances asset class includes emission allowances to which the exemption for emission allowances in

article 2.1(e) (see the table in the answer to Q35A) applies and any bidding under the UK auctioning regulations.

...

**13 Annex
2**

...

Table 1 - MiFID Investment services and activities and the Part 4A permission regime

MiFID Investment Services and Activities	Part 4A permission	Comments
<p>A1- Reception and transmission of orders in relation to one or more financial instruments</p>	<p>Arranging (bringing about) deals in investments (article 25(1) RAO)</p> <p><u>Bidding in emissions auctions (article 24A RAO)</u></p>	<p>Generally speaking, only firms with permission to carry on the activity of arranging (bringing about) deals in investments in relation to securities and contractually based investments which are financial instruments can provide the service of reception and transmission. This is because a service must bring about the transaction if it is to amount to reception and transmission of orders.</p> <p>The activity of arranging (bringing about) deals in investments is wider than A1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders.</p> <p>See Q13, Q14 and Q34A for further guidance.</p>

<p>A2- Execution of orders on behalf of clients</p>	<p>Dealing in investments as agent (article 21 <i>RAO</i>)</p> <p>Dealing in investments as principal (article 14 <i>RAO</i>)</p> <p><u>Bidding in emissions auctions (article 24A <i>RAO</i>)</u></p>	<p>Usually, where a firm executes orders on behalf of clients it will need permission to carry on the activity of dealing in investments as agent. Where a firm executes client orders on a true back-to-back basis or by dealing on own account, it also needs permission to carry on the activity of dealing in investments as principal.</p> <p>See Q15, Q15A and 34A for further guidance.</p>
<p>...</p>		
<p>Note: <u>The activity of <i>bidding in emissions auctions</i> can form part of A1, A2 or A3. In terms of the <i>permission regime</i>, <i>bidding in emissions auctions</i> does not form part of any other <i>regulated activity</i> (see PERG 2.7.7CG) and so a <i>firm</i> must have a separate <i>permission</i> to undertake that activity.</u></p>		