

# **Regulating bidding for Emissions Allowances under the UK Emissions Trading Scheme**

**Consultation Paper**

CP21/6\*

March 2021

## How to respond

We are asking for comments on this Consultation Paper (CP) by **6 April 2021**.

You can send them to us using the form on our website at:  
[www.fca.org.uk/cp21-06-response-form](http://www.fca.org.uk/cp21-06-response-form)

**Or in writing to:**

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# 1 Summary

## Why we are consulting

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- 1.1** In this paper, we propose how we will authorise and supervise certain firms intending to bid for emission allowances (allowances) on the UK auction platform.
- 1.2** Following a public consultation undertaken by the UK Government and Devolved Administrations, the UK Government announced in December 2020 the creation of a UK emissions trading scheme (a UK ETS). The UK ETS replaces the UK's participation in the EU emissions trading scheme (EU ETS) from 1 January 2021. The UK ETS will apply to energy intensive industries, the power generation sector and aviation. Auctions will be the primary means of introducing emissions allowances into the market although a proportion of allowances will be allocated for free.
- 1.3** The legal framework required to support the UK ETS contains various elements including government legislation and amendments to the FCA Handbook and technical standards. The government legislation takes the form of regulations published by the Department for Business, Energy and Industrial Strategy and HM Treasury (HMT). These regulations establish the UK ETS and set out the role and obligations of the UK auction platform.
- 1.4** The purpose of this consultation is to reinstate the regulatory framework necessary to support and supplement the Government legislation relating to bidding on the UK auction platform and trading allowances in the secondary market. The UK Government has announced that ICE Futures Europe will continue to provide the auction platform and secondary market services under the UK ETS until at least December 2022.

## What we are consulting on

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- 1.5** We are consulting on the UK Emission Trading Scheme Instrument 2021 which contains amendments to a number of Handbook modules including PRIN, SYSC, TC, FEES, IPRU-INV, COBS, MAR, SUP, DISP, REC, DEPP and LR together with the Glossary, Perimeter Guide and Enforcement Guide.
- 1.6** These amendments essentially take the form of reinstating provisions and definitions previously deleted as a consequence of the UK's departure from the EU Emissions Trading Scheme at the end of the EU withdrawal Transition Period. These deletions were set out in FCA CP 18/36 [see section 3.7]. Additionally, we are modifying some provisions to reflect the fact that the new scheme is made under UK legislation.
- 1.7** Our draft instrument should be read in conjunction with HMT's draft statutory instruments, the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 and the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021. The former legislation replaces the Commission Auction Regulation (CAR) with UK auctioning regulations, whilst the latter modifies

FSMA and retained EU legislation such as the onshored Market Abuse Regulation (UK MAR) (including provisions relating to scope, inside information, emission allowance market participants and obligations on such entities). Our changes should also be read alongside the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 where that legislation relates to emission allowances.

- 1.8** The changes that we are making to our Handbook are the reinstatement of material that was deleted at end of the Transition Period and necessary consequential amendments. These changes are essentially technical in nature and reflect a continuity of approach to the regulation of emission allowances, platforms and trading. This regime was introduced by MiFID and subsequently developed and enhanced by the EU emission auction regulation, the Market Abuse Regulation (EU MAR) and MiFID II. As such, we expect the provisions to be familiar to market participants. Certain changes have had to be made for the Handbook requirements to apply appropriately to the UK ETS in the place of the EU ETS.
- 1.9** We are also consulting on the Technical Standards (Market Abuse Regulation) (UK Emissions Trading Scheme) Instrument 2021 which proposes consequential changes to certain technical standards under UK MAR (UK MAR Technical Standards), which derive from HMT's legislative amendments to UK MAR. Broadly, these changes clarify the application of technical standards (where relevant) to auction platforms and auctioneers under the UK ETS and/or to UK Emission Allowance Market Participants (UK EAMPs).
- 1.10** The UK Government has announced that auctions for the UK ETS are due to commence as soon as is feasible and no later than Q2 2021.
- 1.11** We are consulting for a period of 4 weeks. This is a shorter period than our usual period of 2 months for a consultation paper of this nature. This period is necessary in order for FCA rules to be in place before the first UK ETS auction is held.

## Who this applies to

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- 1.12** The draft rules will apply to any UK investment firm or credit institution that would require authorisation under MiFID or the Capital Requirements Directive or an 'exempt commodities firm'<sup>1</sup> who wishes to bid in emission auctions.
- 1.13** The draft rules are also of relevance to the establishment of a Recognised Auction Platform.
- 1.14** The amendments to the UK MAR Technical Standards will apply to auction platforms, and auctioneers under the UK ETS, UK EAMPs, Persons Discharging Managerial Responsibility (PDMRs) and persons closely associated with PDMRs within UK EAMPs.
- 1.15** Our proposals on regulation relating to bidding in emission auctions may also be of broader interest to commercial firms who have commitments to obtain and surrender allowances under the UK ETS and who seek to obtain those allowances through

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<sup>1</sup> An FCA-authorised commodities firm that can rely on the onshored RAO exemption corresponding to the "ancillary exemption" in article 2(1)(j) MiFID [see PERG 13, Q44-45, as amended by the draft instrument included as part of this consultation.]

intermediaries which participate in the auctions. It may also be of interest to all types of investors who wish to trade allowances as a financial instrument for investment purposes.

**1.16** Persons other than investment firms and credit institutions, including aircraft operators, may carry on the activity of bidding in emission auctions without authorisation by the FCA. Article 16 of the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 sets out an exhaustive list of persons eligible to apply for admission to bid directly in auctions.

**1.17** We will consider all comments in line with the objective of delivering the UK Government's policy on the UK ETS.

## Equality and diversity considerations

**1.18** We have considered the equality and diversity issues that may arise from the proposals in this CP.

**1.19** Overall, we do not consider that the proposals have a differential impact on any group sharing one of the characteristics protected under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.

## What we want to change

**1.20** The amendments to the FCA Handbook essentially take the form of reinstating provisions previously deleted as a consequence of the UK's departure from the EU Emissions Trading Scheme at the end of the EU withdrawal Transition Period. There are adaptations of certain provisions to take account of the creation of the UK scheme but the overall regulatory framework is designed to provide continuity for bidding firms and their clients and the auction platform provider. A summary of the changes is set out in the table below.

Handbook areas	Proposed changes
Glossary of definitions	Insertion of definitions to take account of a new UK emissions trading scheme, including the reinstatement of the regulated activity of bidding in emissions auctions, the expanded RAO definition of 'financial instruments' to include emission allowances created under the Greenhouse Gas Emissions Trading Scheme Order 2020 (in addition to emission allowances under the EU emissions trading scheme) and the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.
Principles for Businesses (PRIN)	Reinstatement of wording in PRIN 3.1.1 R to disapply PRIN to a firm bidding in emissions auctions if it is an authorised commodities firm that can rely on the onshored RAO exemption corresponding to the "ancillary activity exemption" in article 2(1)(j) MiFID. A new Glossary definition of "exempt MiFID commodities firm" is created to describe these firms.
Senior management arrangements, Systems and Controls sourcebook (SYSC)	SYSC 23 Annex 1 is updated to refer to the defined terms of "exempt MiFID commodities firms", these firms being excluded from the SMCR enhanced regime

Training and Competence sourcebook (TC)	Appendix 1.1. is updated to reinstate the reference to 'MiFID business bidding', that is bidding in emissions auctions carried on by a UK MiFID investment firm, so as to not apply qualification requirements to these firms.
Fees Manual (FEES)	Reinstating provisions into FEES 1, 3 and 4 to take account of the reinstatement of the regulated activity of bidding in emissions auctions. Fees will apply to firms and the recognised auction provider on a similar basis to that which applied prior to the end of the transition period under the Withdrawal Agreement.
Interim Prudential Sourcebook for Investment Businesses: (IPRU-(INV))	Updating application provision in IPRU-INV 3-60 relating to broad scope firms and primary requirement in 3-72R to reflect the new Glossary definition of 'exempt MiFID commodities firm'.
Conduct of Business sourcebook (COBS)	Reinstatement of COBS 1.1.1CR to apply COBS 5 (Distance communications) to an exempt MiFID commodities firm.
Market Conduct sourcebook (MAR)	Updating references in MAR 1 and amending the commodity derivatives position reporting requirement in MAR 10.4.4 to refer to the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.
Supervision manual (SUP)	Amendments to SUP 10C, 12, 15 and 16 to reinstate and update provisions relating to the SMCR, appointed representatives, notifications to the FCA and regular reporting returns to take account of new legislation relating to the creation of a UK ETS.
Decision Procedure Penalties manual (DEPP)	Amendments to DEPP 2 and 6 to take account of the unrevoked Recognised Auction Platform Regulations 2011 and section 123A(2)(c) FSMA.
Dispute Resolution: Complaints sourcebook (DISP)	Amendments to DISP 1 and 2 to disapply chapters 1 and 2 to exempt MiFID commodities firms bidding in emissions auctions.
Recognised Investment Exchange sourcebook (REC)	Amendments to REC 1, 2, 2A, 3, 4 and 5 to take account of the reinstated and modified Recognised Auction Platform Regulations 2011 and the making of the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 by HMT.
Enforcement Guide (EG)	Amendments to EG 7.2 (alternatives to sanctions), 11 (restitution and redress), 19 (non-FSMA powers) and Appendix 3 to reflect: <ul style="list-style-type: none"> <li>(i) the reinstatement of section 122IA FSMA (power to suspend auctioning of auctioned products on a recognised auction platform);</li> <li>(ii) the amendment of the FSMA 2000 (Qualifying Provisions) Order 2013 to include references to the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021;</li> <li>(iii) an amendment to the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;</li> <li>(iv) the reinstatement of the Recognised Auction Platform Regulations 2011; and</li> <li>(v) the reinstatement of section 123A(2)(c) FSMA (power to prohibit temporarily an individual from making a bid, on their own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform).</li> </ul>
Perimeter Guidance (PERG)	Amendments to PERG 2 and 13 including explanations as to how the various overlapping legislation fits together.

- 1.21** The amendments to the UK MAR Technical Standards broadly clarify the application of technical standards (where relevant) to auction platforms and auctioneers under the UK ETS and/or to UK EAMPs.

## Next steps

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- 1.22** We seek feedback on the proposals in this CP.
- 1.23** Please respond by 6 April 2021.
- 1.24** You can use the form on our website: [www.fca.org.uk/cp21-06-response-form](http://www.fca.org.uk/cp21-06-response-form) or email us: [cp21-06@fca.org.uk](mailto:cp21-06@fca.org.uk), or write to us:
- Paul Willis  
Financial Conduct Authority  
12 Endeavour Square  
London E20 1JN
- 1.25** The consultation period for this CP is 4 weeks. This is to ensure we have the final rules in place before the first UK ETS auction.

## 2 The wider context

- 2.1** The UK Government and Devolved Administrations consulted in May 2019 on the future of carbon pricing in the UK after the UK had left the EU ETS. It was subsequently announced in December 2020 that a UK ETS would be established, with the intention of it being operational and the first UK auction of UK allowances being conducted during Q2 2021.
- 2.2** The legislative underpinning for a UK ETS is set out in the Greenhouse Gas Emissions Trading Scheme Order 2020. The UK ETS is closely modelled on the EU ETS. The scheme applies to energy intensive industries, the power generation sector and aviation. It covers activities involving combustion of fuels in installations and sectors like refining, heavy industry and manufacturing. The proposed aviation routes include UK domestic flights, flights between the UK and Gibraltar, flights from the UK to EEA states, and from the UK to Switzerland once an agreement between those two countries is reached.
- 2.3** Auctioning on a recognised auction platform will continue to be the primary – but not exclusive – means of introducing allowances into the market.
- 2.4** The HMT legislation designed to implement the UK ETS takes the form of three statutory instruments which adapt pre-existing legislation from prior to the end of the transition period.
- 2.5** In essence, this legislation reinstates regulated activities, specified investments, definitions and related provisions that were previously deleted to reflect the ending of the UK's participation in the EU ETS. The legislation adapts these, where necessary, to fit with the creation of a new domestic UK ETS. As such, the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 began the process by:
- reinstating provisions of the onshored UK MAR and related FCA powers in FSMA to suspend auctioning of auction products and temporarily prohibit individuals from bidding on emission auction platforms which were both previously set to be deleted by the Market Abuse (Amendment) (EU Exit) Regulations 2019;
  - restoring the regulated activity of bidding in emission auctions in relation to the operation of FSMA (regulation 57).
  - undoing the revocation of the Recognised Auction Platforms Regulations 2011 (regulation 64).
- 2.6** With these provisions reinstated and restored, the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 amends a series of FSMA regulations, retained EU regulations and money laundering legislation to reflect the creation of a new UK ETS. This includes amendments, in particular to the RAO and other scope-related legislation, to reflect the expansion of the existing investment category of emissions allowances to include allowances issued under the UK ETS, including those auctioned on a recognised UK auction platform. In the case of the RAO, the relevant regulated activity has to be carried on in the UK and as regards the Financial Promotions Order, the communication has to be capable of having an



effect in the UK under section 21(3) FSMA. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 also apply to UK branches of non-UK firms.

- 2.7** The regulations include an amended definition of 'financial instrument' incorporating these UK emission allowances for the purposes of UK MAR and MiFIR. These regulations also create gateways enabling the FCA to share confidential information with the newly created registry administrator of the UK ETS.
- 2.8** The third interlocking element of the legislative framework is the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021. This regulation draws from the structure of the EU auction regulation made under the EU Emissions Trading Scheme and makes provisions amongst other things for: -
- the emission allowance products to be auctioned (spot allowances and five-day forwards);
  - how bids are to be submitted and withdrawn, and how the auction clearing price is to be determined;
  - the auction calendar and when that calendar may be adjusted;
  - what happens to the volume of allowances at cancelled auctions and what volume of allowances is to be auctioned annually;
  - a cost containment mechanism, enabling HMT to modify the distribution or volume of allowances to be auctioned in any one year if the carbon price exceeds specified limits;
  - which entities are entitled to bid on the auction platform (in the case of investment firms and credit institutions this is limited to UK entities);
  - the appointment and functions of the auction platform;
  - the reporting of transactions to the FCA as the relevant competent authority;
  - the delivery of the auctioned allowances and the management of collateral given by bidders;
  - fees and costs.
  - auction monitoring including as regards anti-money laundering compliance, remedial measures and sanctions;
  - the publication of auction results and protection of confidential information.
- 2.9** The FCA's rules and guidance set out in this consultation form part of the broad and comprehensive regulatory framework described above which provides for an authorisation regime for financial market participants bidding on the UK auction platform and detailed market conduct obligations relating to activity on the platform.
- 2.10** We are also consulting on the UK MAR Technical Standards which proposes consequential changes to certain technical standards under UK MAR, which flow from HMT legislative amendments to UK MAR. Broadly, these changes clarify the application of technical standards (where relevant) to auction platforms and auctioneers under the UK ETS and/or to UK EAMPs.

## How it links to our objectives

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**2.11** These proposals will help ensure that there is a regulatory framework, compliance with which will ensure that the UK ETS functions in a manner that is in line with our objectives, in a financial markets context when it is implemented. The proposals will reinstate the role of UK MAR and MIFIR in promoting the integrity of the UK Auction Platform and the participation of firms on it being undertaken with transparency and integrity.

**Q1:** Do you agree with our proposals regarding the application of the Handbook in relation to the UK Emission Trading Scheme as regards the following sourcebooks, modules and guides:

- (a) High-Level Standards (PRIN, SYSC, TC and FEES)
- (b) Prudential Standards (IPRU-INV)
- (c) Business Standards (COBS and MAR)
- (d) Regulatory Processes (SUP and DEPP)
- (e) Redress (DISP)
- (f) Specialist Sourcebooks & Listing Rules (REC & LR)
- (g) Regulatory Guides (PERG and EG)
- (h) Glossary

**Q2:** Do you agree with our proposals regarding changes to the UK MAR Technical Standards?

## 3 Changes to our Handbook

- 3.1** Our proposed changes to the Handbook cover various modules, sourcebooks and guides reflecting the scope of the various obligations which had arisen for market participants from participation in the EU ETS. Our approach is one of reinstatement and adaptation of previous requirements, taking account of the specificities of a new UK ETS which will function in a manner similar to the EU ETS, as opposed to the imposition of new obligations. The changes that we have made are consequential to the regime changing from one that implemented the UK's participation in the EU ETS to one that is part of UK domestic legislation.
- 3.2** We have not made any other policy choices that should amend the effect of our Handbook requirements. Most of the instrument comprises guidance (notably in PERG and REC) designed to help firms understand the functioning and application of the legislation relating to the creation of the UK ETS and how it fits into the existing UK regulatory framework.
- 3.3** These changes are explained below by reference to the separate elements of our Handbook. The aim in each case is to replicate, as far as possible, the nature and extent of regulation that applied as at the end of the transition period in the case of the EU emission trading scheme. In the case of Handbook rules, in various cases this involves continuing to modify the application of the Handbook to exempt commodities firms, in order to maintain a proportionate approach to the regulation of auction regulation bidding.

### Proposed Handbook changes

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#### High-level standards

- 3.4** The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 lays out the conduct rules for bidding in emissions auctions for firms. As with the EU Commission Auction Regulation (CAR), it provides that the reception, transmission and submission of a bid by an investment firm or credit institution on any auction platform is to be treated as an investment service for the purposes of MiFID and MiFIR related obligations, including conduct obligations.

#### Changes to PRIN

- 3.5** Our high-level standards are largely concerned with the relationship between firms and their clients. Such are the nature of these obligations that we remain of the view that it is not necessary to apply the Principles for Businesses (PRIN) to an authorised commodities firm that can rely on the onshored RAO exemption corresponding to the "ancillary activity exemption" in article 2(1)(j) MiFID. A new Glossary term of "exempt MiFID commodities firm" is created for this purpose.

- 3.6** Our Handbook implemented this approach during the UK's membership of the EU ETS by setting out an exemption in PRIN 3.1.1R. This exemption was deleted at the end of the transitional period. As our policy approach has not changed, the application provision in PRIN 3.1.1R identifying firms subject to Principles for Businesses is thus reinstated and modified accordingly, with the creation of a UK ETS, so that these firms are not subject to PRIN.

### Changes to SYSC

- 3.7** We also remain of the view that it is not necessary to apply the full scope of our Senior management arrangements, Systems and Controls sourcebook (SYSC) to the activities of these same MiFID-exempt authorised commodities firms. Again, this reflects the approach that we applied to SYSC for the EU ETS in the period up to the end of the transitional period.
- 3.8** Accordingly, reinstated modifications are being made in Annex 1 (Definition of SMCR firm and different types of SMCR firm) in SYSC to exclude exempt MiFID commodities firms from the SMCR enhanced regime if their only regulated activity is bidding in emissions auctions.

### Changes to TC

- 3.9** We are proposing amendments to our training and competence obligations, which are set out within the Training and Competence sourcebook (TC), in a manner which will replicate for the UK ETS the scope of the requirements which existed under the EU ETS.
- 3.10** Appendix 1 of this sourcebook is therefore updated to reinstate the reference to 'MiFID business bidding' so as not to apply a qualification requirement to the activity of bidding in emissions auctions by UK MiFID investment firms. This ensures consistency with the position that we took before the end of the Transition Period, as with PRIN and SYSC above.

### Changes to FEES

- 3.11** Under the EU ETS, the regulated activity of bidding in emissions auctions was subject to an FCA fee requirement. This requirement was deleted when the UK left the EU ETS at the end of the transitional period. It is appropriate that with the reinstatement of that regulated activity under the UK ETS, our fees regime is adjusted to include it.
- 3.12** The proposed amendments to our FEES rules comprise reinstated provisions into FEES 1, 3 and 4 to take account of the reinstatement of the regulated activity of bidding in emissions auctions. Fees will apply to bidding firms and the recognised auction provider on a similar basis to that which applied prior to the end of the Transition Period. There is a small increase in the fee payable for the activity of operating an auction platform. As with other reinstated obligations, existing market participants will be familiar with the content and effect of these changes.

### Changes to Prudential standards

- 3.13** Our prudential standards aim to ensure that investment firms hold an appropriate level of capital for the activities that they undertake. We have explained above that we are making changes to introduce the definition of an "exempt MiFID commodities firm"

which includes certain of those firms bidding in emission auctions. These firms were previously subject to capital requirements as a consequence of their activity in the EU ETS prior to the end of the transitional period.

- 3.14** We have therefore updated the provisions in Interim Prudential Sourcebook for Investment Businesses (IPRU-INV) to impose limited prudential requirements on exempt MiFID commodities firms that wish to undertake auction regulation business as part of the UK ETS. They will be required to hold £50,000 in capital, as was the longstanding requirement for firms undertaking the same activity as part of the EU ETS before the end of the Transition Period.

### **Changes to the Conduct of Business sourcebook**

- 3.15** Our rules which applied to firms under the EU ETS up until the end of the transitional period required them to comply with the requirements of the EU Distance Marketing Directive. The application of these rules to regulated non-MiFID firms whose only activity was participation in emission allowance auctions was removed at the end of the transitional period.

- 3.16** With the introduction of the UK ETS, it is necessary for us to reinstate these requirements to apply to activities now subject to on-shored UK legislation. A minor change is therefore made to COBS to restore the application of COBS 5 (distance communications) to exempt MiFID commodities firms in order to ensure consistency with the position before the end of the Transition Period.

### **Changes to MAR**

- 3.17** We are making a small number of changes to our Market Conduct sourcebook in order to reflect the changes in the language used between the relevant regulations implementing the EU ETS and the UK ETS.

- 3.18** We are therefore proposing the updating of a small number of instances of these defined terms and references to the relevant UK legislation that are included in MAR 1 and 10. These changes are technical and do not represent changes of policy.

### **Changes to Regulatory processes - SUP**

- 3.19** Our Supervision Manual (SUP) included a number of requirements arising from the EU ETS which firms undertaking the activity of bidding on emission auctions were required to comply with. As these provisions were deleted at the end of the transitional period, it is necessary to reinstate the provisions which arise as a consequence of the establishment of the UK ETS.

- 3.20** Accordingly, our proposals update our Handbook to take account of the SYSC changes set out earlier in this CP relating to the new category of exempt MiFID commodities firms, and the reinstatement of elements relating to the activity of bidding in emission auctions in the Appointed Representatives Regulations. These changes reinstate certain exemptions for appointed representatives that existed under the EU ETS.

- 3.21** The general notification and integrated regulatory reporting obligations in SUP chapters 15 and 16 are updated to take account of the creation of the UK ETS. We are proposing that breaches of an applicable provision of the UK auctioning regulations must be notified to us, as well as providing an annual confirmation to us that a firm is

meeting its minimum capital requirement and that it has complied with the directly applicable provisions on it. These changes reinstate the requirements that existed under the EU ETS prior to the end of the transitional period.

### Changes to DEPP

- 3.22** Our proposals also make amendments to our Decision Procedure and Penalties manual (DEPP) as a consequence of the UK ETS. These provisions previously existed in our Handbook until the end of the transitional period in relation to the EU ETS and are now being reinstated.
- 3.23** Previous DEPP 2 and 6A provisions are restored to take account of the restored Recognised Auction Platform Regulations 2011 and restored section 123A(2)(c) FSMA. These relate to the FCA's power to issue statements of public censure of or imposing financial penalties on an auction platform and to the FCA's powers to temporarily prohibit an individual from making a bid on a recognised auction platform.
- 3.24** In the case of both the SUP and DEPP Manual, the changes are designed to ensure consistency with the position before the end of the Transition Period, taking account of the creation of the UK ETS.

### Changes to Redress - DISP

- 3.25** As was the case under the EU ETS, the requirements in the Dispute Resolution: Complaints sourcebook (DISP) are disapplied in the case of exempt MiFID commodities firms bidding in emissions auctions. More generally, it should be borne in mind here and elsewhere that the only MiFID investment firms and credit institutions eligible to bid on the UK auction platform are UK entities. These UK firms have ceased to be eligible to bid on an EU auction platform since the end of the transition period.
- 3.26** Until the end of the transitional period, the rules in DISP made it clear that the regulated activity of auction regulation bidding was excluded from the scope of both the compulsory and voluntary jurisdictions, described in Chapter 2 of DISP. As it was not intended that this activity would fall within the scope of these jurisdictions, the proposed amendments to DISP clarify that this activity remains outside the scope of both jurisdictions upon the establishment of the UK ETS.
- 3.27** Instead, the FCA will accept complaints about these firms' non-compliance with the conduct rules relating to bidding under regulation 42 of the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021. This approach replicates the position under the EU ETS.

### Changes to Specialist sourcebooks

- 3.28** The UK ETS requires that the auction platform is a UK Recognised Investment Exchange. Accordingly, additions are proposed to the Recognised Investment Exchanges sourcebook (REC) in order to include the requirements of the RAP Regulations. It inserts a new chapter, REC 2A, which sets out various guidance on the ways in which an auction platform must meet our recognition requirements.

- 3.29** In REC, the Handbook text relating to the recognition of auction platform providers is restored from the previous text which was applicable until the end of the transitional period. It has been adapted to take account of the legislative framework implementing the UK ETS, notably the Recognised Auction Platform Regulations 2011.

### **Changes to the Listing Rules**

- 3.30** We have made changes to the relevant definitions within the Listing Rules in order to reinstate emission auction products, as defined by article 82A of FSMA, as specified investments for the purposes of this section of our Handbook. The definition of 'emissions auction product' is added back into the definition of 'specified investment' in the list of definitions in LR extracted from the main Handbook Glossary.

### **Regulatory Guides**

- 3.31** We have taken the opportunity to update the guidance in both our Enforcement and Perimeter Guides to take account of the regulatory changes made in HMT legislation. Our proposed changes extend the guidance to activities in emission auction products, and the conduct of an auction platform.
- 3.32** The Perimeter Guidance contains Q and A explaining how the various overlapping legislation fits together, including the RAO, the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 and MiFID-related obligations which apply to bidding in and trading emission allowances. This guidance was previously in our Handbook in relation to the EU ETS.

### **Glossary**

- 3.33** The amendments to the Glossary comprise the creation of various definitions and modifications to existing terms to reflect the effect of the UK legislation replacing the EU legislation supporting the EU ETS.

## 4 Changes to technical standards

- 4.1** As with our proposed changes to the Handbook, our approach to changes to UK MAR technical standards is one of reinstatement and adaptation of previous requirements, taking account of the new UK ETS.

### Changes to market abuse technical standards

- 4.2** We are making a small number of necessary technical changes to UK MAR technical standards which are consequential to HMT changes to UK MAR set out in the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 above and earlier related changes in The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020. At the end of the transitional period, the EU technical standards under EU MAR were onshored into UK law on the premise of there being no UK ETS. The draft technical standards instrument included within this CP is now needed to clarify the application of technical standards (where relevant) to auction platforms and auctioneers under the UK ETS and/or to UK EAMPs. The nature of the actual requirements in those technical standards will however remain the same.
- 4.3** We rely on our permanent technical standards making powers set out in relevant provisions of UK MAR and as further detailed in section 138P onwards of FSMA.
- 4.4** The Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 make changes to UK MAR to include the UK ETS. The principal changes concern the establishment of a UK EAMP and the scope of UK MAR in relation to auctions now applying to the UK auction platform.
- 4.5** Broadly, a UK EAMP is a person who trades or bids, directly or indirectly in UK emission allowances (or related instruments) and who has emissions or rated thermal input related to their UK installations and activities under the Greenhouse Gas Emissions Trading Scheme Order 2020 which exceed a minimum threshold referred to in UK MAR Article 17(2). The minimum threshold is set by Commission Delegated Regulation (EU) 2016/522, as it forms part of UK law. A UK EAMP is subject to requirements to disclose inside information, arrangements for delaying the disclosure of inside information, maintain insider lists, and to notify PDMR transactions for UK and, in certain circumstances, EU allowances.
- 4.6** The Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 also clarify the scope of UK MAR to apply to behaviours or transactions, including bids, relating to the auctioning of emission allowances or auction products based thereon on an auction platform recognised under the UK Recognised Auction Platforms Regulations 2011. UK MAR applies obligations to such auction platforms and to auctioneers under the UK ETS in relation to maintaining insider lists and notifying PDMR transactions. UK MAR applies to the secondary market trading of UK and EU emission allowances on UK and EU trading venues where this is within the territorial scope of UK MAR.



- 4.7** We are consulting on the Technical Standards (Market Abuse Regulation) (UK Emissions Trading Scheme) Instrument 2021 which makes amendments to some UK MAR Technical Standards.
- 4.8** As described above, these are technical changes which are consequential to the changes to UK MAR by the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 above and earlier related changes in The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020. They principally include updating references to refer to UK EAMPs and reinstating references to auction platforms and auctioneers under the UK ETS which reflects the previous obligations on these entities in relation to the auctioning of EU emissions under EU MAR. The nature of the requirements in relation to the disclosure of inside information, arrangements for delaying disclosure of inside information, maintaining insider lists, and notifying PDMR transactions remain broadly the same as under the previous EU MAR technical standards.

## Annex 1

### Questions in this paper

**Q1:** Do you agree with our proposals regarding the application of the Handbook in relation to the UK Emission Trading Scheme as regards the following sourcebooks, modules and guides:

- (a) High-Level Standards (PRIN, SYSC, TC and FEES)
- (b) Prudential Standards (IPRU-INV)
- (c) Business Standards (COBS and MAR)
- (d) Regulatory Processes (SUP and DEPP)
- (e) Redress (DISP)
- (f) Specialist Sourcebooks & Listing Rules (REC & LR)
- (g) Regulatory Guides (PERG and EG)
- (h) Glossary

**Q2:** Do you agree with our proposals as regards our changes to the UK MAR Technical Standards?

## Annex 2

# Cost benefit analysis

### Overview

---

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
2. We are also required by section 138I and 138S(2)(f) to publish a CBA of our proposed technical standards changes.
3. As we are proposing the reinstatement of rules which existed previously in our Handbook, we do not believe that there are any additional significant costs or benefits which arise other than those which existed at the time that those rules were deleted.
4. The corresponding rules for the introduction of the activity of bidding in EU Auctions were consulted on in the Financial Services Authority Consultation Paper CP 12/6 That CP set out in Annex 1 the anticipated costs and benefits arising from the implementation of those proposed rules.
5. With regard to the current proposals, UK firms were active in auctions under the EU ETS until the end of the Transition Period. The announcement of the UK ETS was made by the UK Government in December 2020 and will have given these firms indication that they may continue to conduct this activity from the commencement of UK Auctions. We therefore do not anticipate that firms will incur costs as a consequence of the reinstatement of these rules covering this activity after such a short period of time.
6. Any firms which did not previously bid in the EU Auctions but wish to do so in the UK Auctions will face implementation costs, which would be comparable to those incurred for the commencement of such activities under the previously existing rules.
7. In relation to the changes to certain UK MAR technical standards, we also do not believe that there are any additional significant costs or benefits which arise.
8. This is because the changes clarify the application of technical standards (where relevant) to auction platforms and auctioneers under the UK ETS and/or to UK EAMPs in relation to the disclosure of inside information, notification of the delayed disclosure of inside information, the maintaining of inside lists, and the notification of PDMR transactions. The actual nature of the requirements (including, in relation to the technical means for sending disclosures and notifications and the format and nature of recording the information) remain the same.

9. Therefore, we consider that broadly the same requirements but in relation to UK emission allowances (and in certain circumstances EU emission allowances) will continue to apply to broadly the same persons who were subject to such requirements under EU MAR technical standards in relation to EU emission allowances. ICE Futures Europe will continue to be the UK auction platform whilst we expect that persons who are UK EAMPs under UK MAR will also have been EAMPs under EU MAR. As such we believe that those persons will be able to use the same arrangements which they had in place to meet the same requirements under EU MAR technical standards.
10. The corresponding EU MAR technical standards for the introduction of the requirements above in relation to EU MAR were consulted on by ESMA. Annex 2 of ESMA's Final Report draft technical standards on the Market Abuse Regulation (ESMA 2015/1455) sets out a cost-benefit of the changes.

## Annex 3

# Compatibility statement

### Compliance with legal requirements

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1. The proposals within this Consultation paper have been developed in order to implement the Government's decision to establish a UK Emissions Trading Scheme. Whilst the policies implemented through these proposals are determined by the Government, the FCA remains subject to a number of legal requirements, arising from legislation that it must consider and/or comply with.
2. This Annex records our compliance with a number of legal requirements that apply to the proposals in this consultation. It includes an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
3. When consulting on new rules and technical standards, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules or submitting the standards instrument to HMT for approval is:
  - (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and
  - (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA.
4. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons. This requirement also applies in relation to technical standards made by the FCA pursuant to section 138S(2)(h) FSMA.
5. This Annex also sets out our view of how the proposed rules and technical standards are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
6. In addition, this Annex explains how we have considered the recommendations made by HMT under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
7. This Annex also includes our assessment of the equality and diversity implications of these proposals.
8. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when

determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex also sets out how we have complied with requirements under the LRRRA.

## The FCA's objectives and regulatory principles: Compatibility statement

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9. Our proposals are necessary to implement the UK Government's legislation for the future of carbon pricing through the implementation of a UK ETS. We have had regard to the recommendations of HMT under FSMA Section 1JA for the implementations of aspects of the economic policy of the Government in acting in advancing our strategic and operational objectives.
10. Our proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because the proposals reinstate provisions to enable the effective functioning of the activity of operating and participating in emission allowance auctions. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s.1F FSMA.
11. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of protecting and enhancing the integrity of the UK financial system. By establishing rules in relation to bidding in emission allowances we protect the transparency of the price formation process and the orderly operation of markets.
12. Our rules and technical standards are compatible with the duty to promote effective competition in the interests of consumers.
13. We also consider that our proposals advance the FCA's operational objectives for securing an appropriate degree of protection for consumers, and for protecting and enhancing the integrity of the UK financial system. The proposals reinstate provisions that enable the supervision of and enforcement in relation to activity in UK emission allowance auctions.
14. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). The proposals reinstate provisions that enable the supervision of and enforcement in relation to activity in UK emission allowance auctions.
15. With specific regards to the changes to certain UK MAR technical standards in the Technical Standards (Market Abuse Regulation) (UK Emissions Trading Scheme) instrument 2021, these changes directly support the FCA's operational objective of protecting and enhancing the integrity of the UK financial system. In summary, clarifying the application of requirements relating to the disclosure of inside information, arrangements for delaying the disclosure of inside information, maintaining insider lists, and notifying PDMR transactions to UK emission market allowance participants, and (where relevant) to auction platforms, and auctioneers under the UK ETS, concerning the arrangements for such disclosure and notification,

and the information required, facilitates the FCA's market monitoring, provides transparency to the market, and reduces the risk of the unlawful disclosure of inside information and insider dealing.

## Compliance with the regulatory principles in s.3B FSMA

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- 16.** In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B of FSMA. Not all of these regulatory principles are relevant to the proposals. We cover the most relevant of the principles below.

### The principle that a burden or restriction should be proportionate to the benefits

---

- 17.** We believe that the costs of our proposals are proportionate to the benefits. We have considered the proportionality of our proposals to the extent that they reinstate provisions in our rules that existed in a similar manner when applying to the EU ETS prior to the end of the transitional period. In drafting our proposals, we have sought to minimise the costs that may be incurred by the auction platform, by auction participants, auctioneers related to the UK ETS, and by UK EAMPs by seeking to make minimal changes to the previous requirements. The changes that have been necessary have arisen as a consequence of the legislation and as a consequence of its application to the UK.

### The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

---

- 18.** The creation of the UK ETS is an important element of the UK's approach to climate change, as expressed in the Government's white paper "Powering our net zero future". By permitting the effective functioning of emission allowance auctions with efficiency and integrity, our proposals could contribute towards the sustainability of UK economic growth.
- 19.** This improved integrity of emission allowance trading within the financial system, and the efficient pricing of emissions that it creates should contribute to the sustainable growth of the United Kingdom in the medium to long term.

## **20. Recognising the differences in the businesses carried on by different regulated persons**

- 21.** Where appropriate, we exercise our functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under FSMA. Our proposals recognise that emission allowance auctions are participated in by both authorised and non-authorised entities. Where appropriate, our proposals recognise the application of the legislation is differentiated between these two populations, and are applied in an appropriate manner.

## **Expected effect on mutual societies**

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- 22.** The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.
- 23.** The firms which previously have bid in EU ETS Auctions do not include any mutual societies. We do not expect any mutual societies to bid in future UK ETS Auctions.
- 24.** We do not expect mutual societies to be UK EAMPs under UK MAR.

## **Equality and diversity**

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- 25.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.
- 26.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 1.18 of the Consultation Paper.



## **The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018**

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- 27.** In relation to the Handbook changes that we propose to make using the delegated powers under this statutory instrument, the FCA considers that the changes in this CP are appropriate to prevent, remedy or mitigate any failure of the relevant FCA Handbook provisions to operate effectively, or any other deficiency in the relevant FCA Handbook provisions, arising from the withdrawal of the United Kingdom from the EU. The proposals proposed under these powers do not impose or increase taxation or fees; make retrospective provision; create a criminal offence which is capable of leading to imprisonment of more than two years; establish a public authority; implement the Article 50 Withdrawal Agreement; result in the transfer of a function of an EU authority to a UK authority; confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or amend any legislation other than the relevant FCA Handbook provisions.

## **Legislative and Regulatory Reform Act 2006 (LRR)**

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- 28.** We have had regard to the principles in the LRR and the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and we consider that our proposals are transparent, accountable, proportionate for the activity to which they apply and are consistent.

## Annex 4

### Abbreviations in this document

<b>CAR</b>	EU Commission Auction Regulation 1031/2010 of 12 November 2010 as amended by EU Commission Regulation 1210/2011 of 23 November 2011
<b>CP</b>	Consultation Paper
<b>EAMP</b>	Emission Allowance Market Participant
<b>EU</b>	European Union
<b>EU ETS</b>	EU Emissions Trading Scheme
<b>EU MAR</b>	EU Market Abuse Regulation
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>MAR</b>	FCA's Market Conduct sourcebook
<b>PDMR</b>	Persons Discharging Managerial Responsibility
<b>RAP</b>	Recognised Auction Platform
<b>RAP Regulations</b>	Recognised Auction Platforms Regulations 2011 (SI 2011/2699)
<b>RAO</b>	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)
<b>SMCR</b>	Senior Managers and Certification Regime
<b>UK EAMP</b>	UK Emission Allowance Market Participant
<b>UK ETS</b>	UK Emissions Trading Scheme
<b>UK MAR</b>	UK on-shored Market Abuse Regulation



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# Appendix 1

## Draft Handbook text

## **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 *[date]*.

### **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  
*[date]*

By order of the Board of the Financial Conduct Authority  
[*date*]

## Annex A

### Amendments to the Glossary of definitions

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"> <li>(1) (in relation to an <i>RAP</i>) any of the requirements applicable to an <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 law</i> by virtue of the <i>EUWA</i>.</li> <li>(2) (in relation to a <i>UK RIE</i> applying for recognition as an <i>RAP</i>) any of the requirements under the <i>RAP regulations</i>, the <i>UK auctioning regulations</i> or <i>MiFIR</i> and the <i>UK</i> version of any <i>EU regulation</i> adopted under <i>MiFID</i> or <i>MiFIR</i> which</li> </ol>



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>emissions 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. Underlining indicates new text and striking through indicates deleted text.

<i>branch</i>	(a)	...
		...
	(h)	<del>{deleted}</del> <u>(in relation to a person carrying on auction regulation bidding) 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>UK auctioning regulations or the UK</u> provisions which implemented the relevant <i>Single Market Directive</i> .
<i>complaints investigator</i>		...
	(1)	...
	(3)	<del>{deleted}</del> <u>(in relation to an RAP) the independent person 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):

...

(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:

...

(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 Section C of Annex I of MiFID 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:

...

- (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*]

*investment services and/or activities* ...

[Note: article 2(2) of MiFIR and regulation [5(8)] of the *UK auctioning regulations*]

<i>market abuse</i>	(1) behaviour prohibited by:  ...  (b) <del>articles 38 to 41 of the auction regulation.</del> <u>[deleted]</u>
<i>participant firm</i>	(1) a <i>firm</i> (including a <i>TP firm</i> ) other than:  ...  (g) <del>[deleted]</del> <u>in respect of the carrying on of bidding in emissions auctions, an exempt MiFID commodities firm;</u>  ...  ...
<i>recognised body</i>	an <i>RIE</i> <u>or <i>RAP</i></u>
<i>recognised body requirements</i>	...  (2) (in relation to a <i>UK RIE</i> ) the <i>MiFID/MiFIR</i> requirements; <del>and</del>  (3) <del>[deleted]</del> <u>(in relation to an <i>RAP</i>) the <i>RAP</i> recognition requirements; and</u>  (4) (in relation to any of the bodies specified in (1) <del>and (2)</del> to (3)) 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 an <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) <del>[deleted]</del> <u>bidding in emissions auctions (article 24A);</u>

	...
	...
<i>regulatory function</i>	(as defined in section 291 of the <i>Act</i> (Liability in relation to <i>recognised body's</i> regulatory functions)) any function of a <i>recognised body</i> 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 <i>Act</i> <u>and (for an <i>RAP</i>) under the <i>RAP recognition requirements</i>.</u>
<i>relevant information</i>	... (2) (in <i>REC</i> ) (in relation to an <i>investment</i> ) information which is relevant to determining the current value of that <i>investment</i> <u>or (in relation to <i>RAPs</i>) information on the terms of <i>emissions auction products</i> and the terms on which they will be auctioned on an <i>RAP</i>.</u>
<i>specified investment</i>	(1) any of the following <i>investments</i> specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments): ... (oe) <del>{deleted}</del> <u><i>emissions auction products</i> (article 82A);</u> ... ...
<i>securities and futures firm</i>	a firm whose <i>permitted activities</i> include <i>designated investment business</i> <u>or <i>bidding in emissions auctions</i></u> , which is not an <i>authorised professional firm</i> , <i>bank</i> , <i>BIPRU firm</i> (unless it is an <i>exempt BIPRU commodities firm</i> ), <i>IFPRU investment firm</i> (unless it is an <i>exempt IFPRU investment firm</i> ), <i>building society</i> , <i>collective portfolio management firm</i> , <i>credit union</i> , <i>friendly society</i> , <i>ICVC</i> , <i>insurer</i> , <i>media firm</i> or <i>service company</i> , whose permission does not include a <i>requirement</i> that it comply with <i>IPRU(INV) 5</i> (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e) , (f), (g) or (ga): ... (h) <del>{deleted}</del> <u>a firm to which paragraph 1(k) of Schedule 3 to the <i>Regulated Activities Order</i> applies, whose <i>permitted activities</i> include <i>bidding in emissions auctions</i>.</u>
<i>UK recognised body</i>	a UK <i>RIE</i> <u>or <i>RAP</i></u> .

## 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
...	

<p>(5) Acting as a ‘bidder’s representative’ in relation to <i>bidding in emissions auctions</i>.</p>	<p>Acting as a ‘bidder’s representative’ has the meaning in <del>sub-paragraph 3 of article 6(3) of the <i>auction regulation</i></del> <u>regulation [5(5)] of the <i>UK auctioning regulations</i></u>.</p>
---	---



## Annex D

### 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>MiFID business bidding</u>	<u>13C</u>	<del>[deleted]</del> <u>emissions auction products</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
...		
(g) Any applicant for recognition as a <i>UK recognised body</i> ;	FEES 3 Annex 3, part 1	On or before the date the application is made

(i) under section 287 of the <i>Act</i> ; <u>or</u>		
(ii) under regulation 2(1) of the <i>RAP regulations</i>		

...

### 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	<del>[deleted]</del> <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 an <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. <del>{deleted}</del> <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>	<p><i>FEES 4 Annex 6, part 1 for a UK RIE; and</i></p> <p><i><u>FEES 4 Annex 6R, part 1A for a UK RIE that is also an RAP</u></i></p>	<p>(1) On or before the relevant dates specified in <i>FEES 4.3.6R</i></p> <p>(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</p>	<p><i>Recognition order</i> is made.</p> <p>The modified periodic fee is specified in <i>FEES 4 Annex 6R, Part 1</i>.</p>
...			

**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:
...	
<b>A.10 Firms dealing as principal</b>	its <i>permission</i> includes

	<p>(a) <i>dealing in investments as principal; and/or</i></p> <p>(b) <i>bidding in emissions auctions;</i></p> <p><b>BUT NOT</b> 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 <i>firm</i> is <i>bidding in emissions auctions</i>;</u></p> <p>...</p>
...	
<b>B. Recognised investment exchanges</b>	...
<b>B <del>{deleted}</del> Recognised auction platforms</b>	<u>it is a <i>recognised auction platform</i>.</u>
...	

Part 3

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

...

Activity group	Tariff base
...	
<b>A.10</b>	<p><b>NUMBER OF TRADERS</b></p> <p>...</p> <p>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</i></p>

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

B. Recognised investment exchanges	...
B. <del>[deleted]</del> <u>Recognised auction platforms</u>	<del>[deleted]</del> <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 IFRU 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 R ...

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>	<i>SUP 16.12.29A R</i>	<i>SUP 16.12.29AR</i>	<i>SUP 16.12.29AR</i>
...				

...

#### 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 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

1	<u>Are you meeting your minimum capital requirement?</u>	<u>A</u> yes-no
2	<u>In carrying on bidding in emissions auctions, have you complied throughout the reporting period, and are you</u>	yes-no



currently compliant, with applicable requirements under the  
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

...

<b>Recognised Auction Platforms Regulations 2011 <del>[deleted]</del></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulation 5A</u>	where the <i>FCA</i> is <u>proposing or deciding to publish a statement censuring an <i>RAP</i>, or to impose a financial penalty on an <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 [X] 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 [X] 2021~~**

This table belongs to *DISP 2.5.1R*

The activities which were covered by the *Compulsory Jurisdiction* (~~on IP completion day at [X] 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 [X] 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/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 an *RAP* or to a *UK RIE* applying to become an *RAP*. Regulation 2 of the *RAP regulations* provides that an entity must have *UK RIE* status before it can apply for *RAP* status.
- 2A.1.2 G The *RAP recognition requirements* must be satisfied by an *RAP* applicant for recognition to be granted. These requirements apply both on initial recognition and throughout the period that *RAP* status is held. Therefore, the term *RAP* in the *guidance* should be understood to also refer to an applicant where appropriate and where not otherwise stated.
- 2A.1.3 G The *RAP regulations* apply modified provisions of the *Act* to an *RAP*. For example, an *RAP* is an *exempt person* in respect of its business as an *auction platform* due to the application of section 285 of the *Act* as

modified by the *RAP regulations*. Similarly, section 293 of the *Act* is applied and modified by the *RAP regulations* to provide for *notification rules* and notification requirements in relation to *RAPs*.

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

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

- |  |
|--|
| <p>(1) In considering whether [an <i>RAP</i>] or applicant satisfies the [<i>RAP recognition requirements</i>], the [<i>FCA</i>] may:</p> <p>(a) treat compliance by the [<i>RAP</i>] or applicant with the [<i>recognition requirements</i>] applying to it as a [<i>UK RIE</i>] as conclusive evidence that the [<i>RAP</i>] or applicant satisfies any equivalent [<i>RAP recognition requirements</i>] applying to it under these [<i>RAP regulations</i>], taking into account any arrangements that would be necessary to meet the [<i>RAP recognition requirements</i>], and</p> <p>(b) take into account all relevant circumstances including the constitution of the <i>person</i> concerned.</p> |
| <p>(2) Without prejudice to the generality of paragraph (1), [an <i>RAP</i>] or applicant may satisfy [<i>RAP recognition requirements</i>] by making arrangements for functions to be performed on its behalf by any other <i>person</i>.</p>   |
| <p>(3) Where [an <i>RAP</i>] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by these [<i>RAP regulations</i>] on the [<i>RAP</i>] or applicant to satisfy the [<i>RAP recognition requirements</i>], but it is in addition [an <i>RAP recognition requirement</i>] applying to the [<i>RAP</i>] or applicant that the <i>person</i> who performs (or is to perform) the functions is a fit and proper <i>person</i> who is able and willing to perform them.</p>  |

- 2A.2.2 G The FCA will request information from an *RAP* or *RAP* applicant in order to determine whether it meets the *RAP recognition requirements*.

## 2A.3 Guidance on RAP recognition requirements

- 2A.3.1 G In assessing compliance with the *RAP recognition requirements*, the *FCA* will have regard to relevant guidance in *REC 2* on the equivalent requirements set out in the *Recognition Requirement*



*Regulations.* The *FCA* may also take into account compliance by the *RAP* or *RAP* applicant with the *recognition requirements* (see *REC 2A.2.1UK*). The *FCA* will not make a separate assessment of compliance with the *recognition requirements* during the course of examining an application to become an *RAP* or as part of its ongoing supervision of an *RAP*, unless there is a specific reason to do so.

- 2A.3.2      G      The *guidance* in relation to the *recognition requirements* in the sections of *REC 2* listed in Column A of the table below applies to an *RAP* in relation to the equivalent *RAP recognition requirements* listed in Column C and (if shown) with the modifications in Column B.

Table: Guidance on RAP recognition requirements

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

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

	such a way as to facilitate or encourage <i>market abuse</i> .  <i>REC 2.12.2G</i>  An <i>RAP</i> does not need to maintain its own arrangements for providing information on the terms of <i>emissions auction products</i> to auction bidders where it has made adequate arrangements for other persons to do so on its behalf or there are other effective and reliable arrangements for this purpose.	
<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 an *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 an *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 an *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 an *RAP* under the *Money Laundering Regulations*. The *FCA* will use this power under the *RAP Regulations* where it is appropriate to do so and with regard to the relevant factors listed in *DEPP* 6.2.1G. 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 an *RAP* in exercise of its power in regulation 5A of the *RAP Regulations*, it must give the *RAP* a *warning notice* or a *decision notice* respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a *warning notice*, the *RAP* has a right to make representations on the *FCA*'s proposed decision.
- 2A.4.9 G Where the *FCA* is proposing or deciding to publish a statement censuring an *RAP* or impose a penalty on the *RAP* under regulation 5A of the *RAP Regulations*, the *FCA*'s decision maker will be the *RDC*. This is to ensure that the *FCA*'s power to censure or impose a penalty on an *RAP* has the same layer of separation in the decision-making process, and is exercised consistently with, similar penalty and censure powers of the *FCA* under other legislation. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3. An *RAP* that receives a decision notice under regulation 5A of the *RAP Regulations* may refer the matter to the *Tribunal*.
- 2A.4.10 G Sections 393 and 394 of the *Act* apply to notices referred to in this section. See *DEPP* 2.4 (Third party rights and access to *FCA* material).
- 2A.4.11 G As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in *DEPP* 6.7 applies to penalties imposed under the *RAP Regulations*.
- 2A.4.12 G The *FCA* will apply the approach to publicity that it has outlined in *EG* 6.

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

...

### 3.4 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:

...

- (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 an 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 an RAP where the person had responsibilities both in the UK RIE and the RAP, a description of the responsibilities he or she 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 an RAP, under regulation 13 of the RAP regulations. See *REC* 2.2 and *REC* 2A.2).

...

3.13.2 R Where a *UK recognised body* makes an offer or agrees to delegate any of its *relevant functions* to another *person*, it must immediately give the *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 an *RAP*) *RAP recognition requirements* following that delegation;

...

...

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

...

#### Hours of operation

- 3.14.11 R Where a *UK recognised body* proposes to change its normal hours of operation or (for *RAPs*) the timing, frequency or duration of its bidding windows, it must give the *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 an *RAP*, it will need to make a separate application to be recognised as an *RAP* (see *REC 5 (Applications)*)
- 3.14A.6A G In accordance with regulation [23(3)] of the *UK auctioning regulations*, an *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 an *RAP*) decides to cancel an auction. Planned changes to the provision of services should be notified to the *FCA* under *REC 3.14*.

...

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

...

#### Recognised auction platforms - cancellation of auctions

- 3.15.8 R ~~{deleted}~~ Where an 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 an RAP) RAP recognition requirement relating to access to *facilities* can still be met. REC 3.18.3R focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* or (for an RAP) RAP recognition requirements can be met. In the case of investment firms and credit institutions, only UK entities will be eligible to bid on an RAP.

...

- 3.18.2 R ...

...

- (3) ~~{deleted}~~ (in relation to an RAP) particulars of its reasons for considering that, in admitting that type of person to membership, it is able to continue to satisfy the RAP recognition requirement in regulation 20 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 an *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 an *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 an *RAP* proposes to impose a maximum bid size or take other remedial measures to mitigate risks of *market abuse*, *financial crime* or anti-competitive behaviour, 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 an *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 an *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) An *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*, an *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*, an *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*, an *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 an *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 an *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 an *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), and (for *RAPs*) regulation 5(7) of the *RAP regulations*, 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 ~~[deleted]~~ Where the *FCA* makes a revocation order under section 297 of the *Act* in relation to a *UK RIE* which is also an *RAP*, the *FCA* will also revoke the *recognition order* relating to its status as an *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) ~~[deleted]~~ in the case of an *RAP* in relation to its *RAP recognition order*, it has not carried on the business of an auction platform during the 12 months beginning with the day on which the *RAP recognition order* took effect in relation to it, or it has not carried on the business of an auction platform at any time during the period of six months ending with the day the *RAP recognition order* is revoked.
- 4.7.4 G The *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*.

- 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 an 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 an 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 an RAP.

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



the *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 an *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 <u>or (for an <i>RAP</i>) auction platform</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 auction platform and any secondary market in emissions auction products which it operates or plans to operate.</u>
...	
(18)	Details of membership selection criteria, rules and procedures, <u>including (for an <i>RAP</i>) details of how the rules of the <i>UK RIE</i> will change in order to reflect <i>RAP</i> status.</u>
...	

...

## 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</u>	<u>See <i>REC</i> 3.27</u>	<u>Event concerned</u>	<u>Without delay</u>

	<u>as specified by the UK auctioning regulations</u>			
<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 an 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	Products, services and normal hours of operation or (for <i>RAPs</i> ) <u>the timing, frequency or duration of its bidding windows</u>	See REC 3.14	See REC 3.14	Immediately
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 <i>shareholders</i> 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 <i>RAP</i> recognition requirement in regulation 20 of the <i>RAP</i> 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</u> <u>clearing price</u> <u>methodology</u> <u>and manner to</u> <u>modify</u> <u>auction</u> <u>calendar</u>	<u>See REC 3.27</u>	<u>Event</u> <u>concerned</u>	<u>Immediately</u>
...				

## Annex M

### Amendments to the Listing Rules (LR) sourcebook

In this Annex, 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)	<del>[deleted]</del> <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 requirement<sup>13</sup> of the *Act*, the *UK auctioning regulations* or *any onshored regulation*, or has engaged in *market abuse*.

<sup>13</sup> 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 an *RAP* (*REC* 2A.4) and its policy in relation to the power to give directions to an *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) ~~{deleted}~~ 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 ~~{deleted}~~ 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 ~~{deleted}~~ 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 or created under article [18] of the trading scheme order 2020, which established the scheme for greenhouse gas emission allowance trading within the EU. 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
...	

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

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 <del>Directive 2003/87/EC (Emissions Trading Scheme)</del> <u>the UK trading scheme</u> who, when dealing in emission allowances, does not:</p> <ul style="list-style-type: none"> <li>• execute client orders; or</li> <li>• provide any investment services or perform any investment activities other than dealing on own account; or</li> <li>• apply a high-frequency algorithmic trading technique.</li> </ul>	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
A1- Reception and transmission of orders in relation to one or more financial instruments	<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>

A2- Execution of orders on behalf of clients	<p>Dealing in investments as agent (article 21 RAO)</p> <p>Dealing in investments as principal (article 14 RAO)</p> <p><u>Bidding in emissions auctions (article 24A RAO)</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><b><u>Note:</u></b> 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 to undertake that activity</i>.</p>		

## Appendix 2

# Draft Technical Standard

## TECHNICAL STANDARDS (MARKET ABUSE REGULATION) (UK EMISSIONS TRADING SCHEME) INSTRUMENT 2021

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following articles of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation):
    - (a) Article 13(7) (Accepted market practices);
    - (b) Article 17(10) (Public disclosure of inside information);
    - (c) Article 18(9) (Insider lists);
    - (d) Article 19(15) (Managers’ transactions); and
  - (2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (e) section 138P (Technical standards);
    - (f) section 138Q (Standards instruments);
    - (g) section 138S (Application of Chapters 1 and 2); and
    - (h) section 137T (General supplementary powers).
- B. The rule-making powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

### Pre-conditions to making

- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.
- D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

### Interpretation

- E. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.

### Modifications

- F. The following technical standards are amended in accordance with the Annex A to D of this instrument.

(1)	(2)
Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards	Annex A

with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council	
Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council	Annex B
Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance	Annex C
Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council	Annex D

### Commencement

G. This instrument comes into force on [*date*].

### Citation

H. This instrument may be cited as the Technical Standards (Market Abuse Regulation) (UK Emissions Trading Scheme) Instrument 2021.

By order of the Board  
[*date*]



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

## Annex A

### **Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council**

...

## Article 2

### **Format for drawing up and updating the insider list**

1. Issuers ~~and~~, UK emission allowance market participants, auction platforms and auctioneers, or any person acting on their behalf or on their account, shall ensure that their insider list, drawn up pursuant to Article 18 of Regulation (EU) No 596/2014, is divided into separate sections relating to different inside information. New sections shall be added to the insider list upon the identification of new inside information, as defined in Article 7 of Regulation (EU) No 596/2014.

Each section of the insider list shall only include details of individuals having access to the inside information relevant to that section

...

4. The electronic formats referred to in paragraph 3 shall at all times ensure:
  - (a) the confidentiality of the information included by ensuring that access to the insider list is restricted to clearly identified persons from within the issuer ~~and~~, UK emission allowance market participant, auction platform and auctioneer, or any person acting on their behalf or on their account that need that access due to the nature of their function or position;

...

## ANNEX I

## TEMPLATE 1

**Insider list: section related to [Name of the deal-specific or event-based inside information]**

...

...					
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/ <u>UK</u> emission allowance market participant/ <u>auction</u> <u>platform/auctioneer</u> or third party of insider]	...

## TEMPLATE 2

**Permanent insiders section of the insider list**

...

...					
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/ <u>UK</u> emission allowance market participant/ <u>auction</u> <u>platform/auctioneer</u> or third party of insider]	...

...

## Annex B

**Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council**

...

## ANNEX

**Template for notification and public disclosure of transactions by persons discharging managerial responsibilities and persons closely associated with them**

...		
<b>2</b>	<b>Reason for the notification</b>	
a)	Position/status	<p>[For persons discharging managerial responsibilities: the position occupied within the issuer / <u>UK</u> emission allowances market participant/ <u>auction platform/auctioneer</u> should be indicated, e.g. CEO, CFO.] [For persons closely associated,</p> <p>— An indication that the notification concerns a person closely associated with a person discharging managerial responsibilities;</p> <p>— Name and position of the relevant person discharging managerial responsibilities.]</p>
b)	Initial notification/ Amendment	[Indication that this is an initial notification or an amendment to prior notifications. In case of amendment, explain the error that this notification is amending.]
<b>3</b>	<b>Details of the issuer-<del>or</del> <u>UK</u> emission allowance market participant, <u>auction platform or auctioneer</u></b>	
...		...

## Annex C

**Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance**

...

### Article 1

#### Definitions

1. For the purposes of this Regulation, ‘supervised persons’ means any of the following:

(a) ...

...

(d) any person subject to authorisation, organisational requirements and supervision by ~~‘competent financial authority’~~ the Financial Conduct Authority or ‘national regulatory authority’ as defined in Regulation (EU) No 1227/2011 of the European Parliament and of the Council;

(e) any person subject to authorisation, organisational requirements and supervision by the Financial Conduct Authority or other UK regulators or agencies responsible for commodities spot or derivatives markets;

(f) operators with compliance obligations under the Greenhouse Gas Emissions Trading Scheme Order 2020.

(g) ~~‘IP completion day’ has the meaning given in the European Union (Withdrawal Agreement) Act 2020.~~

2. ‘IP completion day’ has the meaning given in the European Union (Withdrawal Agreement) Act 2020.

## **Annex D**

**Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council**

...

## **CHAPTER II**

### **TECHNICAL MEANS FOR APPROPRIATE PUBLIC DISCLOSURE OF INSIDE INFORMATION**

#### **Article 2**

#### **Means for public disclosure of inside information**

1. Issuers and UK emission allowance market participants shall disclose inside information pursuant to Article 17 of Regulation (EU) No 596/2014 using technical means that ensure:

...

(b) ...

...

(ii) the identity of the issuer or UK emissions allowance market participant: full legal name;

(iii) the identity of the person making the notification: name, surname, position within the issuer or UK emission allowance market participant;

...

(v) ...

Issuers and UK emission allowance market participants shall ensure the completeness, integrity and confidentiality by remedying any failure or disruption in the communication of inside information without delay.

2. ~~Emission~~ UK emission allowance market participants required to disclose inside information in accordance with Article 4 of Regulation (EU) No 1227/2011 may use the technical means established for the purpose of disclosing inside information under that Regulation for the disclosure of inside information under Article 17(2) of Regulation (EU) No 596/2014 provided the inside information required to be disclosed has substantially the same content and the technical means used for the disclosure ensure that the inside information is communicated to the relevant media.

...

### CHAPTER III

## TECHNICAL MEANS FOR DELAYING THE PUBLIC DISCLOSURE OF INSIDE INFORMATION

### Article 4

#### Notification of delayed disclosure of inside information and written explanation

1. For the purpose of delaying the public disclosure of inside information in accordance with the third subparagraph of Article 17(4) of Regulation (EU) No 596/2014, issuers and UK emission allowance market participants shall use technical means that ensure the accessibility, readability, and maintenance in a durable medium of the following information:

(a) the dates and times when:

(i) the inside information first existed within the issuer or the UK emission allowance market participant;

...

(iii) the issuer or UK emission allowance market participant is likely to disclose the inside information;

(b) the identity of the persons within the issuer or UK emission allowance market participant responsible for:

...

(c) evidence of the initial fulfilment of the conditions referred to in Article 17(4) of Regulation (EU) No 596/2014, and of any change of this fulfilment during the delay period, including:

(i) the information barriers which have been put in place internally and with regard to third parties to prevent access to inside information by persons other than those who require it for the normal exercise of their employment, profession or duties within the issuer or UK emission allowance market participant;

...

2. Issuers and UK emission allowance market participants shall inform, by means of a written notification, the Financial Conduct Authority of a delay in the disclosure of inside information and provide any written explanation of such delay through the dedicated contact point within, or designated by, the Financial Conduct Authority using the electronic means specified by the Financial Conduct Authority.

...

3. The electronic means referred to in paragraph 2 shall ensure that the notification of a delay in the disclosure of inside information includes the following information:
  - (a) the identity of the issuer or UK emission allowance market participant: full legal name;
  - (b) the identity of the person making the notification: name, surname, position within the issuer or UK emission allowance market participant;

...

