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## STATUTORY INSTRUMENTS

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# 2011 No. 2699

## The Recognised Auction Platforms Regulations 2011

### PART 5 U.K.

#### Auction Recognition Requirements

##### Interpretation U.K.

12. In this Part—

“bidders” means persons who have been admitted to bid at auctions conducted by the recognised auction platform;

“investor” means any person making a bid at an auction conducted by a recognised auction platform, and any person on whose behalf such a bid is made.

##### Method of satisfying auction recognition requirements U.K.

13.—(1) In considering whether a recognised auction platform or applicant satisfies the auction recognition requirements, the Authority may—

(a) treat compliance by the auction platform or applicant with the recognition requirements applying to it as a recognised investment exchange as conclusive evidence that the auction platform or applicant satisfies any equivalent auction recognition requirements applying to it under these Regulations, taking into account any arrangements that would be necessary to meet the auction recognition requirements, and

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

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

(3) Where a recognised auction platform or applicant makes arrangements of the kind mentioned in paragraph (2) the arrangements do not affect the responsibility imposed by these Regulations on the recognised auction platform or applicant to satisfy the auction recognition requirements, but it is in addition an auction recognition requirement applying to the recognised auction platform or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them.

##### Financial resources U.K.

14.—(1) The auction platform must have financial resources sufficient for the proper performance of its functions as a recognised auction platform.

(2) In considering whether this requirement is satisfied, the Authority must (without prejudice to the generality of regulation 13(1)) take account of all the circumstances, including the auction platform's connection with any person, and any activity carried on by the auction platform, whether or not it is an exempt activity.

### **Suitability** U.K.

15.—(1) The auction platform must be a fit and proper person to perform the functions of a recognised auction platform.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 13(1)) take into account all the circumstances, including the auction platform's connection with any person.

(3) The persons who effectively direct the business and operations of the auction platform must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the auction platform.

(4) The persons who are in a position to exercise significant influence over the management of the auction platform, whether directly or indirectly, must be suitable.

### **Systems and controls** U.K.

16.—(1) The auction platform must ensure that the systems and controls used in the performance of its functions are adequate, and appropriate for the scale and nature of its business.

(2) Paragraph (1) applies in particular to systems and controls concerning—

- (a) the transmission of information;
- (b) the assessment, mitigation and management of risks to the performance of the auction platform's functions;
- (c) the monitoring of bids made by, and transactions effected by, bidders at auctions conducted by the auction platform;
- (d) the technical operation of the auction platform, including contingency arrangements for disruption to its facilities;
- (e) the operation of the arrangements mentioned in regulation 17(2)(d) below; and
- (f) (where relevant) the safeguarding and administration of assets belonging to users of the auction platform's facilities.

### **Safeguards for investors** U.K.

17.—(1) The auction platform must ensure that business conducted at auctions or otherwise by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

(2) Without prejudice to the generality of paragraph (1), the auction platform must ensure that—

- (a) access to the auction platform's facilities, including access to bid at auctions conducted by the auction platform, is subject to criteria designed to protect the orderly functioning of—
  - (i) such auction, and
  - (ii) the interests of investors;
- (b) it has transparent and non-discretionary rules and procedures—
  - (i) to provide for fair and orderly auctions, and
  - (ii) to establish objective criteria for the efficient execution of transactions;
- (c) appropriate arrangements are made for relevant information to be made available to participants in auctions conducted by the auction platform;
- (d) satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions executed under systems operated by the auction platform;

- (e) satisfactory arrangements are made for recording transactions executed by bidders at auctions conducted by the auction platform and any other transactions which are cleared or to be cleared by means of its facilities;
  - (f) appropriate arrangements are made to—
    - (i) identify conflicts between the interests of the auction platform, its owners and operators and the interests of bidders, investors and other persons who make use of its facilities or the interests of any market operated by the auction platform in its capacity as a recognised investment exchange;
    - (ii) manage such conflicts so as to avoid adverse consequences for the operation of the auctions conducted by, or markets operated by, the auction platform in its capacity as a recognised investment exchange and for the persons who use its facilities;
  - (g) appropriate measures (including the monitoring of transactions executed under systems operated by the auction platform) are adopted to reduce the extent to which the auction platform's facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their influence; and
  - (h) where the auction platform's facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.
- (3) In paragraph (2)(c), “relevant information” means information on the terms of the emission allowance, and the terms on which it will be offered for sale at auction.

#### **Promotion and maintenance of standards** U.K.

**18.**—(1) The auction platform must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities by persons in the course of using the facilities provided by the auction platform.

(2) The auction platform must be able and willing to co-operate, by the sharing of information or otherwise, with the Authority, with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service or with an overseas regulator within the meaning of section 195.

#### **Rules and consultation** U.K.

**19.**—(1) The auction platform must ensure that appropriate procedures are adopted for it to make rules, for keeping the rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the auction platform's facilities in appropriate cases.

(3) The auction platform must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with regulation 22(3).

#### **Access to auctions** U.K.

**20.**—(1) The auction platform must make transparent and non-discriminatory rules, based on objective criteria, governing access to auctions conducted by it or other facilities offered by it.

(2) In particular those rules must specify the obligations for bidders, investors and other persons who make use of its facilities arising from—

- (a) the constitution and administration of the auction platform;
- (b) rules relating to bids made at auctions conducted by the auction platform, or other transactions executed under systems operated by the auction platform;

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- (c) its professional standards for staff of any bidders; and
  - (d) the rules and procedures for clearing and settlement of transactions executed by bidders.
- (3) Rules of the auction platform about access to bid at auctions conducted by it must permit the auction platform to give access only to those persons who are eligible to be given access to bid directly in auctions under [<sup>F1</sup>regulation 16 of the UK auctioning regulations].
- (4) Rules under this regulation must enable—
- [<sup>F2</sup>(a) investment firms <sup>F3</sup>..., which—
    - (i) have permission under Part 4A of the Financial Services and Markets Act 2000 to carry on regulated activities relating to investment services and activities, bidding on their own account or on behalf of their clients; and
    - (ii) would require authorisation under [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments if they had their head office in an EEA state;
  - [<sup>F4</sup>(aa) investment firms which—
    - (i) satisfy the condition in sub-paragraph (a)(i); and
    - (ii) are authorised under [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments as amended from time to time;]
  - (b) credit institutions <sup>F5</sup>..., which—
    - (i) have permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits, bidding on their own account or on behalf of their clients; and
    - (ii) would require authorisation under [Directive 2013/36/EU](#) of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms if they had their head office in an EEA state,]
  - [<sup>F6</sup>(ba) credit institutions which—
    - (i) satisfy the condition in sub-paragraph (b)(i); and
    - (ii) are authorised under [Directive 2013/36/EU](#) of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms as amended from time to time;]
- <sup>F7</sup>... to apply for access to bid in auctions conducted by the auction platform <sup>F8</sup>....
- (5) The auction platform must make arrangements regularly to provide the Authority with a list of bidders.
- (6) The auction platform may refuse access to its facilities on legitimate commercial grounds.
- (7) This regulation is without prejudice to the generality of regulation 17.

#### Textual Amendments

- F1** Words in [reg. 20\(3\)](#) substituted (22.4.2021) by [The Recognised Auction Platforms \(Amendment and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/494), regs. 1(2), **6(7)(a)**
- F2** [Reg. 20\(4\)\(a\)\(b\)](#) substituted (22.4.2021) by [The Recognised Auction Platforms \(Amendment and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/494), regs. 1(2), **6(7)(b)(i)**
- F3** Words in [reg. 20\(4\)\(a\)](#) omitted (19.5.2021) by virtue of [The Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning \(Amendment\) Regulations 2021](#) (S.I. 2021/513), regs. 1(2), **2(2)(a)**

- F4** Reg. 20(4)(aa) inserted (19.5.2021) by The Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021 (S.I. 2021/513), regs. 1(2), **2(2)(b)**
- F5** Words in reg. 20(4)(b) omitted (19.5.2021) by virtue of The Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021 (S.I. 2021/513), regs. 1(2), **2(2)(c)**
- F6** Reg. 20(4)(ba) inserted (19.5.2021) by The Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021 (S.I. 2021/513), regs. 1(2), **2(2)(d)**
- F7** Words in reg. 20(4) omitted (22.4.2021) by virtue of The Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/494), regs. 1(2), **6(7)(b)(ii)(aa)**
- F8** Words in reg. 20(4) omitted (19.5.2021) by virtue of The Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021 (S.I. 2021/513), regs. 1(2), **2(2)(e)**

### Choice of settlement facilities **U.K.**

**21.**—(1) The rules of the auction platform must permit a bidder to use whatever settlement facility that person chooses for a transaction.

(2) Paragraph (1) only applies where—

- (a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction, and
- (b) the auction platform is satisfied that the smooth and orderly functioning of the auction platform will be maintained.

### Discipline **U.K.**

**22.**—(1) The auction platform must have—

- (a) effective arrangements (which include the monitoring of transactions executed under systems operated by the auction platform) for monitoring and enforcing compliance with its rules;
- (b) effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in regulation 17(2)(d); and
- (c) effective arrangements for monitoring transactions effected under systems operated by the auction platform in order to identify disorderly trading conditions.

(2) Arrangements made pursuant to paragraph (1) must include procedures for—

- (a) investigating complaints made to the auction platform about the conduct of persons in the course of using the auction platform's facilities; and
- (b) the fair, independent and impartial resolution of appeals against decisions of the auction platform.

(3) Where arrangements made pursuant to paragraph (1) include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways—

- (a) towards meeting expenses incurred by the auction platform in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the auction platform in relation to that breach;
- (b) for the benefit of users of the auction platform's facilities;

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(c) for charitable purposes.

## Complaints **U.K.**

**23.**—(1) The auction platform must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions.

(2) But paragraph (1) does not extend to—

- (a) complaints about the content of rules made by the platform, or
- (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in regulation 22(2)(b).

(3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the auction platform, and for that person to report on the result of the investigation to the auction platform and to the complainant.

(4) The arrangements must confer on the person mentioned in paragraph (3) the power to recommend, if that person considers it appropriate, that the auction platform—

- (a) makes a compensatory payment to the complainant,
- (b) remedies the matter complained of,

or takes both of these steps.

(5) Sub-paragraph (3) is not to be taken as preventing the platform from making arrangements for the initial investigation of a complaint to be conducted by the platform.

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)
- Regulations revoked by [S.I. 2019/710 reg. 25\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 25(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 64(2))