
DRAFT STATUTORY INSTRUMENTS

2021 No.

The Greenhouse Gas Emissions Trading
Scheme Auctioning Regulations 2021

PART 13

Auction Surveillance, Remedial Measures and Sanctions

Monitoring of auctions

36.—(1) By the end of each month, the appointed auction platform must report on the implementation of the auctions it conducted in the preceding month in particular with respect to—

- (a) fair and open access;
- (b) transparency;
- (c) price formation;
- (d) technical and operational aspects of the implementation of the contract appointing the auction platform concerned;
- (e) the relationship between the auction processes and the secondary market in respect of the information under points (a) to (d);
- (f) any evidence of anti-competitive behaviour, market abuse, money laundering, terrorist financing or other criminal activity that the auction platform has been made aware while carrying out its functions pursuant to regulation 23;
- (g) any breach of these Regulations of which the auction platform has been made aware while carrying out its functions pursuant to regulation 23 of these Regulations;
- (h) follow-up to any information reported under points (a) to (g).

(2) In addition, by 31 January of each year, the auction platform must also provide a summary and an analysis of these monthly reports of the previous year.

(3) The appointed auction platform must provide the reports under paragraph (1) and (2) to the FCA.

(4) The FCA must—

- (a) monitor the implementation of the contracts appointing the auction platforms;
- (b) publish the summary reports referred to in paragraph (2) on its website.

(5) The auctioneer and appointed auction platform must actively cooperate with the FCA and, upon request, provide the FCA with any information in their possession relating to the auctions, as is reasonably required for the monitoring of the auctions.

Monitoring the relationship with bidders

37.—(1) The appointed auction platform must monitor the relationship with bidders admitted to bid in its auctions throughout its subsistence, by—

- (a) scrutinising bids made throughout the course of that relationship to ensure that the bidding behaviour of bidders is consistent with the auction platform's knowledge of the customer, its business and risk profile, including, where necessary, the source of funds;
 - (b) maintaining effective arrangements and procedures for the regular monitoring of the compliance by persons admitted to bid pursuant to regulation 17(1) and (2) with the market conduct rules of the appointed auction platform;
 - (c) monitoring transactions undertaken by persons admitted to bid pursuant to regulation 17(1) and (2) and by politically exposed persons (within the meaning of regulation 35 of the Money Laundering Regulations) using its systems in order to identify breaches of the rules referred to in sub-paragraph (b), unfair or disorderly auctioning conditions or conduct that may invoke market abuse.
- (2) Where scrutinising bids in accordance with paragraph (1)(a), the appointed auction platform must pay particular attention to any activity which it regards as particularly likely, by its nature, to be related to money laundering, terrorist financing or other criminal activity.
- (3) The appointed auction platform must ensure that the documents, data or information it holds on a bidder are kept up-to-date, and for this purpose, the auction platform may—
- (a) request any information of the bidder, pursuant to regulation 17(2) and (3) and regulation 18(7) and (8), it requires for the purposes of monitoring the relationship with that bidder following its admission to bid in the auctions, throughout the subsistence of that relationship and for a period of 5 years following its termination;
 - (b) require any person admitted to bid to re-submit an application for admission to bid at regular intervals;
 - (c) require any person admitted to bid to promptly notify the auction platform concerned of any changes to the information submitted to it pursuant to regulation 17(2) and (3) and regulation 18(7) and (8).
- (4) The appointed auction platform must keep records of—
- (a) the application for admission to bid submitted by an applicant, pursuant to regulation 17(2), including any amendments thereto;
 - (b) the checks carried out in—
 - (i) processing the application for admission to bid submitted, pursuant to regulations 17 and 18;
 - (ii) scrutinising and monitoring the relationship, pursuant to paragraph (1)(a) and (c), following an applicant's admission to bid;
 - (c) all information relating to a given bid submitted by a given bidder in an auction, including any withdrawal or modification of such bids, pursuant to regulation 5(3) and (4);
 - (d) all information relating to the conduct of each auction in which a bidder has submitted a bid.
- (5) The appointed auction platform must keep the records referred to in paragraph (4) for as long as a bidder is admitted to bid in its auctions and for at least 5 years following the termination of the relationship with that bidder.

Notification of money laundering, terrorist financing or other criminal activity

38.—(1) The FCA must monitor and take the necessary measures to ensure compliance of an appointed auction platform with the customer due diligence measures referred to in regulation 17(2) (e), with the obligation to refuse to grant admission to bid, revoke or suspend any admission to bid already granted pursuant to regulation 19(1) and (2), with the monitoring and record keeping requirements of regulation 37 and with the notification requirements of paragraphs (4), (5) and (6).

(2) The FCA may exercise the powers given to it in regulations 66 to 74 of the Money Laundering Regulations for the purpose of its supervisory functions under these Regulations as though—

- (a) those functions were supervisory functions given to the FCA under the Money Laundering Regulations; and
- (b) references in regulations 66 to 74 of the Money Laundering Regulations to contravention of the Money Laundering Regulations included a reference to contravention of these Regulations.

(3) The appointed auction platform may be held liable for infringements of regulations 18(8) and (12), 19(1) and (2), 37, and paragraphs (4), (5) and (6) of this regulation, and infringements of these provisions are to be treated as breach of a relevant requirement for the purposes of Part 9 of the Money Laundering Regulations.

(4) The appointed auction platform, its directors and employees, must cooperate fully with the National Crime Agency (“NCA”) by promptly—

- (a) informing the NCA, including by filing a report, on their own initiative, where they know, suspect or have reasonable grounds to suspect that funds in relation to the auctions, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by promptly responding to requests by the NCA for additional information in such cases;
- (b) providing the NCA directly, at its request, with all necessary information.

(5) All suspicious transactions, including attempted transactions, must be reported by the appointed auction platform to the NCA.

(6) The appointed auction platform must inform the NCA of the individual who is responsible for forwarding information pursuant to this regulation.

Notification of market abuse

39.—(1) The appointed auction platform must—

- (a) establish and maintain effective arrangements, system and procedures—
 - (i) to prevent and detecting market abuse and attempted market abuse,
 - (ii) detect and report suspicious orders and transactions;
- (b) report to the FCA, any suspicions of market abuse or attempted market abuse by any person admitted to bid in the auctions or by any person on whose behalf the person admitted to bid in the auctions is acting,

in accordance with Article 16 of the Market Abuse Regulation and with any technical standards made under that Article.

(2) The report given under paragraph (1) must state what remedial action it has taken or proposes to take to counter the wrongdoing referred to in paragraph (1).

Maximum bid-size and other remedial measures

40.—(1) A maximum bid-size, or any other remedial measures necessary to mitigate an actual or potential discernible risk of market abuse, money laundering, terrorist financing or other criminal activity, as well as anti-competitive behaviour, may be imposed by the appointed auction platform after consulting the FCA.

(2) The maximum bid-size must either be expressed as a percentage of the total number of auctioned allowances in any given auction or a percentage of the total number of auctioned allowances in any given year, whichever may be most appropriate to deal with the risk of market abuse.

(3) For the purposes of this regulation, “maximum bid-size” means the maximum number of allowances that may be bid for, directly or indirectly, by any group of persons listed in regulation 16(1) or (2), which belong to any of the following categories—

- (a) the same group including any parent undertakings, its subsidiary undertakings and affiliated undertakings;
- (b) the same business grouping;
- (c) a separate economic unit having an independent power of decision where they are controlled, directly or indirectly, by public bodies or state-owned entities.

Market conduct rules or any other contractual arrangements

41. Regulations 36 to 40 are without prejudice to any other action that an appointed auction platform is entitled to take under its market conduct rules or any other contractual arrangements in place, directly or indirectly, with any bidders admitted to bid in the auctions, provided that such action does not conflict with or undermine the provisions of regulations 36 to 40.

Conduct rules for other persons authorised to bid on behalf of others

42.—(1) This regulation applies to persons authorised to bid pursuant to regulation 16(2).

(2) Persons referred to in paragraph (1) must apply the following conduct rules in their relationship with their clients—

- (a) they must accept instructions from their clients on comparable terms;
- (b) they must refuse to bid on behalf of a client if they have reasonable grounds to suspect money laundering, terrorist financing, other criminal activity or market abuse, subject to sections 327, 328, 329 and 338(3) of the Proceeds of Crime Act 2002(1) and section 21A of the Terrorism Act 2000(2);
- (c) they may refuse to bid on behalf of a client if they have reasonable grounds to suspect that the client is unable to pay for the allowances for which it is seeking to bid;
- (d) they must enter into a written agreement with their clients which—
 - (i) does not impose any unfair conditions or restrictions on the client concerned, and
 - (ii) provides for all the terms and conditions relating to the services offered including in particular payment and delivery of the allowances;
- (e) they may require their clients to make a deposit by way of advance payment for allowances;
- (f) they may not unduly limit the number of bids that a client might submit;
- (g) they may not prevent or restrict their clients from engaging the services of other entities eligible pursuant to regulation 16(1)(b) to (e) and (2) to bid on their behalf in the auctions;
- (h) they must pay due regard to the interests of their clients who request them to submit bids on their behalf in the auctions;
- (i) they must treat clients fairly and without discrimination;
- (j) they must maintain adequate internal systems and procedures to process requests from clients to act as agent in an auction and to be able to participate effectively in an auction in

(1) 2002 c. 29. Sections 327, 328 and 329 have been amended by ss. 102 and 103 of the Serious Organised Crime and Police Act 2005 (c. 15). Section 338(3) has been amended by s. 106(6) of that Act, and S.I. 2007/3398.

(2) 2000 c. 11. Section 21A was inserted by paragraph 5 of Schedule 2 to the Anti-Terrorism, Crime and Security Act 2001 (c. 24), and amended by paragraph 128 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 72 of Schedule 8 to the Crime and Courts Act 2013 (c. 22), and S.I. 2007/3398

particular with regard to the submission of bids on behalf of their clients, collect payment and collateral from and transfer allowances to clients for whom they act;

- (k) they must prevent the disclosure of confidential information from that part of their business responsible for receiving, preparing and submitting bids on behalf of their clients to that part of their business responsible for preparing and submitting bids on their own account or to that part of their business responsible for dealing on their own account on the secondary market;
 - (l) they must keep records of information obtained or created in their role as intermediaries handling bids on behalf of their clients in the auctions, for five years from the date of obtaining or creating the information concerned.
- (3) The amount of the deposit referred to in paragraph (2)(e) must be calculated on a just and reasonable basis.
- (4) The method of calculating the deposit referred to in paragraph (2)(e) must be set out in the agreements entered into pursuant to paragraph (2)(d).
- (5) Any part of the deposit referred to in paragraph (2)(e) not used to satisfy payment for allowances must be refunded to the payee within a reasonable period after the auction as stated in the agreements entered into pursuant to paragraph (2)(d).
- (6) Persons referred to in paragraph (1) must apply the following conduct rules when bidding on their own account or on behalf of their clients—
- (a) they must provide any information requested by any auction platform where they are admitted to bid to fulfil its functions under these Regulations;
 - (b) they must act with integrity, reasonable skill, care and diligence.
- (7) The FCA is responsible for authorising such persons to carry out the activities referred to in paragraph (1) and for monitoring and enforcing compliance with the conduct rules provided for in paragraphs (2) to (6) including the handling of any complaints made for non-compliance with such conduct rules.
- (8) The FCA may only grant an authorisation to the persons referred to in paragraph (1) where the persons fulfil all of the following conditions—
- (a) they are of sufficiently good repute and sufficiently experienced to ensure proper respect of the conduct rules provided for in paragraphs (2) to (6);
 - (b) they have put in place the necessary processes and checks to manage conflicts of interest and serve the best interests of their clients;
 - (c) they comply with the requirements of the Money Laundering Regulations;
 - (d) they comply with any other measures deemed necessary having regard to the nature of the bidding services being offered and the level of sophistication of the clients in question in terms of their investor or trading profile as well as any risk-based assessment of the likelihood of money laundering, terrorist financing or other criminal activity.
- (9) The FCA must monitor and enforce the conditions listed in paragraph (8).
- (10) Clients of bidders referred to in paragraph (1) may direct any complaints that they may have with regard to compliance with the conduct rules provided for in paragraphs (2) to (6) to the FCA.
- (11) Persons referred to in paragraph (1) that are admitted to bid at an auction platform pursuant to regulations 16, 17 and 18 may provide bidding services to clients referred to in regulation 17(3)(a).