
STATUTORY INSTRUMENTS

2011 No. 2699

The Recognised Auction Platforms Regulations 2011

PART 2

Recognised Auction Platforms

Recognition orders

2.—(1) A recognised investment exchange may apply to the Authority for an order declaring it to be a recognised auction platform for the purposes of these Regulations.

(2) The application must be made in such manner as the Authority may direct and must, to the extent required by the Authority, be accompanied by—

- (a) a copy of the rules for the auction platform;
- (b) a copy of any guidance for the auction platform issued by the applicant;
- (c) particulars of the way in which the exchange satisfies the auction recognition requirements; and
- (d) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) If it appears to the Authority that the applicant satisfies the auction recognition requirements, the Authority may make a recognition order declaring the applicant to be a recognised auction platform.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.

(5) Information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.

(6) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

(7) In considering an application, the Authority may have regard to any information which it considers relevant to the application.

(8) The application must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

(9) A recognition order must specify a date on which it is to come into effect.

Authority's power to give directions

3.—(1) This regulation applies if it appears to the Authority that a recognised auction platform—

- (a) has failed, or is likely to fail, to satisfy the auction recognition requirements; or
- (b) has failed to comply with any other obligation imposed on it by or under these Regulations.

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(2) The Authority may direct the body to take specified steps for the purpose of securing the body's compliance with—

- (a) the auction recognition requirements; or
- (b) any obligation of the kind in question.

(3) Those steps may include—

- (a) the granting to the Authority of access to the premises of the auction platform for the purpose of inspecting—
 - (i) those premises; or
 - (ii) any documents on the premises which appear to the Authority to be relevant for the purpose mentioned in paragraph (2);
- (b) the suspension of the carrying on of any regulated activity by the auction platform for the period specified in the direction.

(4) A direction under this regulation is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988^{M1}.

(5) The fact that a rule made by a recognised auction platform has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the auction platform.

Marginal Citations

M1 1988 c. 36.

Revoking recognition

4.—(1) A recognition order may be revoked by an order made by the Authority at the request, or with the consent, of the recognised auction platform.

(2) If it appears to the Authority that a recognised auction platform—

- (a) is failing, or has failed, to satisfy the auction recognition requirements;
- (b) has not carried on the business of an auction platform during the period of twelve months beginning with the day on which the recognition order declaring it to be a recognised auction platform took effect in relation to it;
- (c) has not carried on the business of an auction platform at any time during the period of six months ending with the relevant day; or
- (d) has failed, or is likely to fail, to comply with any obligation imposed on it by these Regulations, or by the emission allowance auctioning regulation,

it may make an order revoking the recognition order which declared that body to be a recognised auction platform, even though that body does not wish the order to be made.

(3) Where the Authority makes a revocation order under section 297 in relation to a recognised investment exchange which is also a recognised auction platform, the Authority shall also make an order revoking the recognition order which declared that body to be a recognised auction platform.

(4) The “relevant day”, for the purposes of paragraph (2)(c), is the day on which the power to make an order under paragraph (1) is exercised.

(5) An order under this regulation (“a revocation order”) must specify the date on which it is to take effect.

(6) In the case of a revocation order made under paragraph (2) or (3), the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.

(7) An order under paragraph (1) or (2) does not affect that body's recognition as a recognised investment exchange.

Procedure

5.—(1) Before refusing to make a recognition order, giving a direction under regulation 3 or making a revocation order under regulation 4, the Authority must—

- (a) give written notice of its intention to do so to the body which would be affected by the proposed refusal, direction or revocation order;
- (b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and
- (c) publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.

(2) A notice under paragraph (1) must—

- (a) state why the Authority intends to refuse to make the recognition order, to give the direction or to make the revocation order; and
- (b) draw attention to the right to make representations conferred by paragraph (3).

(3) Before the end of the period for making representations—

- (a) the body which would be affected by the proposed refusal, direction or revocation order,
- (b) any member of that body, and
- (c) any other person who is likely to be affected by the proposed refusal, direction or revocation order,

may make representations to the Authority.

(4) The period for making representations is—

- (a) two months beginning—
 - (i) with the date on which the notice is served on the body which would be affected by the proposed refusal, direction or revocation order; or
 - (ii) if later, with the date on which the notice is published; or
- (b) such longer period as the Authority may allow in the particular case.

(5) In deciding whether to—

- (a) refuse a recognition order,
- (b) give a direction, or
- (c) make a revocation order,

the Authority must have regard to any representations made in accordance with paragraph (3).

(6) When the Authority has decided whether to refuse a recognition order, give the proposed direction or make the proposed revocation order, it must—

- (a) give written notice of [^{F1}its decision] to the body affected by its decision;
- (b) if it has decided to refuse a recognition order, give a direction or make a revocation order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.

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- (7) If the Authority considers it essential to do so, it may give a direction under regulation 3—
- (a) without following the procedure set out in this regulation; or
 - (b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure set out in paragraphs (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under paragraph (1).

Textual Amendments

- F1** Words in reg. 5(6)(a) substituted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, **8(2)**

[^{F2}Power to impose civil penalties

5A.—(1) If the Authority considers that a recognised auction platform has contravened any requirement in [^{F3}regulation 17, 18(8), 19(1) or (2), or 37 of the UK auctioning regulations], it may impose upon on the auction platform a penalty of such amount as it considers appropriate, and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Authority must not impose a penalty on a person under paragraph (1) 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.

(3) In deciding whether a person has failed to comply with the requirements referred to in paragraph (1), the Authority must consider whether the person concerned followed any relevant guidance issued by the Authority.

(4) If the Authority is entitled to impose a penalty on a person under this regulation in respect of a particular matter, it may, instead of imposing a penalty in respect of that matter, publish a statement censuring the person.

(5) A penalty under this regulation is payable to the Authority.

Textual Amendments

- F2** Regs. 5A, 5B inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, **8(3)**
- F3** Words in reg. 5A(1) substituted (22.4.2021) by [The Recognised Auction Platforms \(Amendment and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/494\)](#), regs. 1(2), **6(3)**

Procedure for civil penalties

5B.—(1) If the Authority proposes to take action against a person under regulation 5A, it must give that person a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If the Authority decides to take action against a person under regulation 5A, it must without delay give the person a decision notice.

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- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the Authority decides to take action against a person under regulation 5A, that person may refer the matter to the Tribunal.
- (8) In this regulation “the Tribunal” has the meaning given in section 417 of the Act.
- (9) Sections 387, 389 to 391, 393 and 394 of the Act apply to notices given in accordance with this regulation.
- (10) Section 388 of the Act applies to notices given in accordance with this regulation and references in subsection (1)(e)(i) of that section to “any right to have a matter referred to the Tribunal which is given by this Act” shall include a right to have a matter referred to the Tribunal under this regulation.]

Textual Amendments

F2 Regs. 5A, 5B inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, **8(3)**

[^{F4}**5C.**—(1) The Authority must in respect of each of its financial years pay to the Treasury any amounts received by it during the year by way of penalties imposed under regulation 5A.

(2) The Treasury may give directions to the Authority as to how the Authority is to comply with its duty under paragraph (1).

(3) The directions may in particular—

- (a) specify the time when any payment is required to be made to the Treasury, and
- (b) require the Authority to provide the Treasury at specified times with information relating to penalties that the Authority has imposed under regulation 5A.

(4) The Treasury must pay into the Consolidated Fund any sums received by them under this regulation.]

Textual Amendments

F4 [Reg. 5C](#) inserted (1.4.2013) by [The Payment to Treasury of Penalties Regulations 2013 \(S.I. 2013/429\)](#), regs. 1, **2(6)**

Market abuse regime applicable from July 2016 to January 2018 in relation to auctioned products other than financial instruments

^{F5}**6.**

Textual Amendments

F5 [Reg. 6](#) 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(4)**

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Application of certain provisions of the Act with modifications

7. In its application to a recognised investment exchange that is also a recognised auction platform, Part 18 (recognised investment exchanges [^{F6}clearing houses and CSDs]) of the Act, apart from Chapter 3A ^{M2}, has effect with the modifications set out in Schedule 2.

Textual Amendments

F6 Words in [reg. 7](#) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), [reg. 1](#), [Sch. para. 37](#) (with [regs. 7\(4\)](#), [9\(1\)](#))

Marginal Citations

M2 Chapter 3A was inserted into the Act by [S.I. 2007/126](#).

Application of Chapter 3A of Part 18 of the Act with modifications

^{F7}8.

Textual Amendments

F7 [Reg. 8](#) 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\(4\)](#)

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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))