



HM TREASURY

Regulating auctions of EU emissions allowances

July 2011



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Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Amendments required to the Financial Services and Markets Act 2000	7
Chapter 3	Amendments required to anti-money laundering legislation	13
Annex A	Draft regulations amending the Financial Services and Markets Act 2000	15
Annex B	Draft regulations amending the Money Laundering Regulations	29
Annex C	Order amending the Proceeds of Crime Act 2002 and the Terrorism Act 2000	33
Annex D	Summary of questions	35

1

Introduction

1.1 This informal consultation document and the changes it proposes will ensure that the necessary regulatory framework is in place to enable UK Regulated Investment Exchanges (RIEs) to auction EU Emissions Trading System (EU ETS) carbon allowances from 2013 on behalf of EU Member States.

1.2 This document sets out the rationale for the proposed amendments to existing legislation on financial services and draft regulations intended to implement the provisions necessary for the Financial Services Authority (FSA) to authorise UK platforms to auction EU emissions allowances (EUAs). This will enable UK RIEs to be eligible to compete in several auction platform procurement processes across the EU.

The EU Emissions Trading System

1.3 The EU ETS is at the heart of UK Government policy to tackle climate change. The system covers sectors responsible for around half of the UK's carbon dioxide emissions. The EU ETS is expected to deliver annual carbon savings of 51MtCO₂ in 2020 - a reduction in the emissions of the power sector and heavy industry of 22 percent based on 2008 levels.

1.4 The EU ETS works on a 'cap and trade' basis. A cap is set on EU Member State's emissions, which declines over time. EUAs equal to each year's cap are then issued and allocated to sectors covered by the system. Allowances can be allocated for free or auctioned by national governments.

1.5 The UK currently auctions EUAs through the Debt Management Office. Changes to the EU ETS from 2013 mean that national auctions must take place on regulated markets, rather than by government agencies.

Phase III of the EU Emissions Trading System

1.6 The regulatory framework for auctioning EUAs during Phase III (Commission Regulation (EU) No 0131/2010¹) was published in the Official Journal on 18 November 2010. This requires EU Member States that are potential hosts of auction platforms to extend national laws implementing specific elements of the European financial regulatory framework to the activity of auctioning EU emissions allowances. These are the Market in Financial Instruments Directive (MiFID), the Market Abuse Directive (MAD) and the Anti-Money Laundering Directives.

1.7 In the UK this will require the extension of specific provisions in the Financial Services and Markets Act (2000) (FSMA), and related secondary legislation which implements MiFID and MAD and the anti-money laundering regulations (MLR). This document outlines the proposed modifications.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:302:0001:0041:EN:PDF>

Appointing an auction platform

1.8 The Auctioning Regulation (AR) provides for the appointment of a common auction platform by EU Member States and the European Commission but also permits individual Member States to opt out of the common platform by appointing their own national auction platform. The UK, along with Germany and Poland, has informed the Commission that they will exercise this opt out and appoint national auction platforms. The AR provides for Member States to auctioning allowances in the form of either two-day spots or five-day futures.

1.9 Appointments of all auction platforms, both national and common, will be subject to a competitive procurement process. According to procurement rules bidders must be legally capable of auctioning emissions allowances in line with the provisions set out in the AR.

The Financial Services Authority

1.10 In the UK the FSA regulates financial markets. The changes to the regulatory structure for emissions allowances contained in this document extend the FSA's regulatory remit to the auctioning of emissions allowances. The FSA will also be consulting on the consequential changes required to their Rulebook.

Further requirements of the Auctioning Regulations

1.11 There are other areas of the AR that require national implementation in order to take effect. These primarily concern the activities of bidders participating in carbon auctions. Draft regulations to implement these changes will be published in a future consultation.

Who should read this

1.12 Recognised Investment Exchanges (RIEs) and future RIEs that may wish to auction EU emissions allowances (EUAs).

How to respond

1.13 HM Treasury invites comments on the proposals and the specific questions contained in this document. The questions are throughout and are summarised in Annex D. Please contact us if you would like to meet to discuss these proposals.

Please submit your response by Monday **22nd August 2011**.

Please send responses to:

euetsconsultation@hmtreasury.gsi.gov.uk, or

EU ETS Consultation
4/10 HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

1.14 We are keen to understand the costs and benefits of the new requirements to become a recognised auction platform. We are using this engagement to obtain a better understanding of the impacts of the proposed regulations to ensure that the costs of compliance with EU requirements are kept to a minimum, whilst maximising the benefits.

Confidentiality

1.15 When responding please state whether you are responding as an individual or representing the views of an organisation. Written responses may be published on HM Treasury's website unless the author requests otherwise. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of e-mails will be disregarded for the purpose of publishing responses, unless an explicit request for confidentiality is made in the body of the response. If you wish part, but not all, of your response to remain confidential please supply two responses - one for potential publication, with the confidential information deleted, and one confidential version.

2

Amendments required to the Financial Services and Markets Act 2000

2.1 As set out in the introduction, the EU Auctioning Regulations (AR) for phase III of the EU Emissions Trading System (EU ETS) require that certain provisions of financial services legislation apply to the auctioning emissions allowances. In the UK this requires modifications to the Financial Services and Markets Act 2000 (FSMA) and related secondary legislation.

Regulated markets

2.2 In order to take advantage of existing organisational infrastructure for financial markets, a fundamental requirement of the AR (under article 35) is that auctions of allowances in phase III of the EU ETS must be conducted on an auction platform, which has been authorised as a regulated market within the meaning of the Markets in Financial Instruments Directive (MiFID).

2.3 Under MiFID regulated markets and their market operators are authorised and supervised by the competent national authorities in the Member State where the regulated market or its market operator are registered or situated. In the UK the Financial Services Authority (FSA) is the relevant authority. The UK transposition of the regulatory framework under MiFID specifically applies to trading, as opposed to auctioning, and only to financial instruments (which include five-day futures) but not to spot products¹.

2.4 The AR provides that a Member State may only appoint a national auction platform after the Member State where the platform is established has ensured that national measures transposing the provisions of Title III of MiFID (that is, provisions relating to regulated markets, including such matters as organisational, monitoring, transparency and access requirements) apply to the auctioning of two-day spots or five-day futures “to the extent relevant”. Member States must also ensure that competent national authorities are able to authorise and supervise auction platforms in accordance with national measures implementing Title IV of MiFID (the provisions relating to competent authorities).

2.5 To enable the appointment of a national auction platform, application of these provisions is also necessary to enable interested and eligible entities located in a Member State to be able to bid to become the EU common auction platform or the platform for another opt out Member State.

2.6 The provisions of Title III of MiFID on regulated markets have primarily been implemented in the UK in Part XVIII of the Financial Services and Markets Act 2000 (FSMA) through provisions for Recognised Investment Exchanges (RIEs), the UK form of “regulated markets” within the meaning of MiFID, and in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (Recognition Regulations). As required by the AR only bodies which are RIEs (and therefore regulated markets) will be eligible to apply for recognition as an auction platform.

¹ In its consultation on the review of MiFID issued in December 2010 the Commission invited views on whether to classify emission allowances as financial instruments (section 5.4 and question 66) but this issue is not addressed in the Auctioning Regulation

Recognised auction platforms

2.7 Article 35 of the AR requires a separate authorisation process for regulated markets for the purposes of the AR. It is proposed to create a new category of “recognised auction platform”. This would be a RIE for which a recognition order as an auction platform has been made by the competent authority. The requirements applying to RIEs will be applied with modification as appropriate to provide the basis for recognition as an auction platform.

2.8 The key recognition requirements for becoming a recognised auction platform are set out in Part 5 of the attached draft regulations (found in Annex A). In order to make the process as efficient as possible, compliance by an applicant with the recognition requirements applying to it as an RIE will be taken as evidence that the applicant satisfies any equivalent recognition requirements for being an auction platform. This will negate as far as possible any need for repeating elements of the process already undergone in becoming an RIE.

Modifications to Part 18 FSMA

2.9 The provisions of part 18 of FSMA are modified in their application to recognised auction platforms to ensure that the exemption from the general prohibition on undertaking regulatory activity by way of business will, in the case of an RIE which is a recognised auction platform, apply equally to its business as an auction platform.

2.10 Separate provision is made for applications for recognition as an auction platform and for the revocation of recognition orders. This is modelled on the equivalent provisions in sections 287, 289, 290 and 297 of FSMA, but reflecting the provisions of the AR. It is made clear that revocation of an order recognising an RIE as a recognised auction platform does not necessarily affect its recognition as an RIE. Provision is also made in regulation 4 enabling the FSA to give directions requiring a recognised auction platform to take steps to comply with recognition requirements or other obligations, modelled on sections 296 and 298 of FSMA.

2.11 Section 291 (liability in relation to recognised body’s regulatory functions), section 292A (publication of information by recognised investment exchange) and section 293 (notification requirements) are modified to ensure that they will apply appropriately to RIEs which have also received recognition as a recognised auction platform. The FSA’s power to require information under section 293A to satisfy itself that a RIE is complying with directly applicable community legislation made under MiFID is extended. This is so the FSA can check that an RIE recognised as a recognised auction platform is complying with the AR.

2.12 Similar modifications are made in relation to the obligation for the FSA to make arrangements for investigation of complaints about recognised bodies in section 299. In the case of an RIE which is also a recognised auction platform, a “relevant complaint” for the purposes of section 299 will be not only a complaint which the FSA considers is relevant to the question of whether it should remain an RIE, but also a complaint which is relevant to the question whether the exchange concerned should remain a recognised auction platform.

2.13 Modifications to section 300 clarify that HM Treasury’s power to confer functions on the Tribunal in respect of disciplinary proceedings of an investment exchange also applies in relation to proceedings under the rules of investment exchange made in relation to an auction platform. Modifications to section 301F (assessment: general), ensure that the provisions in Chapter 1A (control over recognised investment exchanges) work appropriately in relation to an RIE which is also a recognised auction platform. The FSA will be required to consider whether a proposed acquisition in relation to an RIE will not threaten the sound and prudent management of any financial market, or any auction platform operated by the investment exchange.

2.14 Chapter 2 of Part 18 of FSMA (Competition Scrutiny) is not being applied to recognised auction platforms. The UK will be appointing a single recognised auction platform. Accordingly, provision for competition scrutiny would be of limited relevance. However, the exclusion from the prohibition in Chapters 1 and 2 of the Competition Act 1998 provided for in Chapter 3 of Part 18 will apply to the regulatory provisions and practices relating to a recognised auction platform as they apply to other regulatory provisions and practices of an RIE.

2.15 Section 312A is modified so that the passport rights given to EEA Operators to make arrangements in the UK to facilitate access to, or the use of, a specified regulated market it operates outside the UK also apply in relation to arrangements for access to a specified auction platform it operates outside the UK. Equally, modifications are made to section 312C in relation to RIEs making the same arrangements in another EEA state to facilitate access to an auction platform operated in the UK. The obligation on the FSA to comply with a request for information under Article 42.6 of MiFID is extended to requests made under that provision as applied to auction platforms under the emission allowances auctions regulations.

Box 2.1: Questions on auction platforms

1. Do you consider that the requirements in the draft regulations reflect those provisions of Title III of MiFID which it is appropriate to apply to platforms for the auctioning of emissions allowances? If not, please identify which provisions are missing (or, conversely, any that have been applied which you consider are unnecessary).
2. Do you agree that it is appropriate not to apply Chapter 2 of Part 18 (Competition Scrutiny) to recognised auction platforms?
3. Do you have any comments on the general approach taken in the draft regulations of providing for a new category of recognised auction platform, based on RIE status?
4. How much do you expect it will cost your organisation to comply with the regulatory requirements for becoming a recognised auction platform, both initial one-off costs and on-going annual costs? Would you be able to broadly describe the main costs? Can you identify quantitative or qualitative benefits of becoming a recognised auction platform?

Market abuse

2.16 The framework for dealing with market abuse also needs to be applied, with modifications, to the auctioning of emissions allowances. In the UK, the EU Market Abuse Directive (2003) (MAD) is transposed into national law in Part 8 of the Financial Services & Markets Act (2000) (FSMA).

Extending the market abuse framework

2.17 The AR requires that in the process of appointing an auction platform, provision is made for a choice between two-day spot and five-day futures. The final selection of the auctioned product is made on the basis of a competitive tender and value for money. While five-day futures are within the definition of a financial instrument in EU legislation (MiFID), two-day spot transactions are not.

2.18 As MAD only applies to financial instruments, existing market abuse provisions do not extend to auctioned emissions allowances that take the form of two-day spot transactions.

2.19 Consequently the AR makes provision in Articles 37-41 for an equivalent market abuse regime which cover auctioned products that are not financial instruments within the meaning of MAD. These articles reflect the provisions of the existing MAD in order to produce a harmonious and effective framework for the treatment of either two-day spot or five-day futures.

2.20 In addition, further modifications are required to the transposition of MAD in FSMA to reflect the different nature of emission allowances and the fact that they will be sold by auction. MAD is largely secondary market focused, whereas auctioning is a primary market activity. Modifications are therefore needed in order to satisfy the provisions of the AR and to ensure that the existing market abuse provisions work effectively in relation to auctioning emissions allowances.

2.21 Regulation 6 of and Schedule 1 to the draft regulations in Annex A show the Government's proposals to modify the UK's market abuse provisions to include the auctioning of emissions allowances. These provisions seek to apply the existing provisions on market abuse to emission allowances offered for sale on auction platforms and expand the necessary definitions to encompass emissions auctions. These provisions will be brought into force later than the provisions modifying Part XVIII of FSMA, so that they apply by the time auctions of emission allowances are being conducted.

Other changes to the EU market abuse regime

2.22 The European Commission has previously indicated that it is intending to use the Review of the MAD to seek greater harmonisation and to strengthen the pan-EU framework for preventing and dealing with market abuse. The draft regulations in Annex A reflect the UK's transposition of MAD as it currently stands today. These will be revised accordingly, if necessary, when the Commission's Review is concluded and any changes to the EU market abuse regime have been made public.

2.23 The UK's domestic market abuse regime from 2001 predates the creation of the EU framework and although it is underpinned by the minimum-harmonisation MAD (2003) the UK has a slightly different regime in place. The Government's approach has been to maintain the existing UK market abuse framework until the outcome of the Commission's review of MAD is known. HM Treasury is engaging with market participants this summer about these domestic provisions, ahead of the EU Market Abuse Review taking place this autumn.

2.24 As a more robust framework is envisaged to result from the Commission's review the UK is minded to extend its domestic provisions - currently operating under a sunset clause - to the auctioning of emission allowances. The provisions will apply to the auctioning of emission allowances which are financial instruments (five-day carbon futures). They will not be relevant to the auctioning of spots, which are not financial instruments.

2.25 The reason is because the AR effectively recreates the provisions of the EU MAD for two-day spots so as to apply the EU market abuse regime to these types of instruments. The AR is directly applicable. By contrast, as carbon futures are classified as financial instruments under MiFID, the market abuse provisions already apply to them as well as any domestic measures imposed by Member States. Therefore, extending the UK's additional domestic provisions will apply only to carbon futures and not to carbon spots.

2.26 The Government recognises this creates a slightly different regulatory framework for carbon spots and carbon futures. However, there are compelling reasons to treat spots differently – not least because they provide a mechanism for immediate delivery and so should not be classed or treated as financial instruments. Moreover disapplying the domestic market abuse provisions from carbon financial instruments would create an alternative disparity, between the treatment of carbon financial instruments and other forms of financial instruments.

2.27 The draft regulations in Annex A outline how the UK's market abuse provisions will be modified to take into account the new regulated activity of auctioning emissions allowances. These draft provisions seek to apply the existing provisions on market abuse to emission allowances offered for sale on auction platforms and provide the necessary definitions to encompass the activity of emissions trading, reflecting the requirements of the AR.

Applying the market abuse framework

2.28 The UK has seven forms of behaviour that are captured in the definition of market abuse. The draft regulations modify section 118 of FSMA to create an eighth behaviour. This is to capture activity that contravenes any of the provisions in Articles 38-41 of the AR, thereby granting the FSA regulatory powers with respect to the auctioning of emissions allowances where the emission allowance concerned is not a financial instrument. This is in addition to the FSA's existing powers to regulate market abuse in relation to financial instruments.

2.29 This includes enabling the FSA's existing powers to levy penalties to apply to the trading of emissions allowances. New drafting also makes provision for those behaviours to be taken into account in relation to any auction platform appointed under the AR (including auctions carried out abroad). This reflects the scope of the AR, which specifies that failure to comply applies to auctions carried out abroad as well as in Member States' own territory.

2.30 In addition, current market abuse provisions in FSMA are drafted with specific reference to behaviour relating to the trading of financial instruments on markets. A primary auction platform is a different type of trading mechanism than a market, and Part VIII of FSMA is modified so that its provisions extend to auction platforms. Furthermore the capacity of HM Treasury to specify prescribed markets and qualifying investments is extended to include auction platforms and related qualifying investments.

2.31 The definitions of insider trading are also extended to cover information, which would be likely to affect the price at which bids are may be made rather than just the price of investments. Additionally, as the AR requires the creation of new bodies – namely the auction platform, the auctioneer, and the auction monitor – the definition of insiders is modified to take account of these new entities.

2.32 Modifications are also made to the definitions of "accepted market practice", "dealing" and "regular user", to include auction platforms as well as markets and the activity of bidding or withdrawing a bid with respect to market abuse. The definitions set out in regulation 1 clarify some expressions specific to trading emissions allowances. A narrow definition is provided for a bid to cover making an offer in an auction of emissions allowances (and to reflect the uniqueness of making this particular kind of bidding a regulated activity). A definition is also provided for a recognised auction platform.

Box 2.1: Questions on market abuse

5. In your view, do the draft regulations in Annex A apply market abuse provisions effectively to cover the auctioning of emissions allowances?
6. Do you support the analysis of the regulatory treatment of five-day futures, in particular the suggestion that the UK's domestic provisions for market abuse are extended to five-day futures? We welcome views as to the usefulness of having in place a more robust regulatory framework, with the specificities of the carbon market in mind.
7. Do you have any comments on the respective treatment of two-day spot and five-day futures under the market abuse framework proposed?
8. Do you expect that the extension of the existing market abuse regime with modifications to cover auctions of emissions allowances in the form of two day spots will impose additional costs on your organisation, either one-off or recurring annual costs? Are you able to identify quantitative or qualitative benefits?

3

Amendments required to anti-money laundering legislation

3.1 The EU Auctioning Regulation (AR) applicable to phase III of the EU Emissions Trading System (EU ETS) sets out certain anti-money laundering rules which must be applied by auction platforms when auctioning emissions allowances. To achieve this Member States must apply their domestic measures implementing certain provisions of the Third Money Laundering Directive (3MLD) to platforms auctioning emissions allowances. The 3MLD is implemented in the UK by the Money Laundering Regulations 2007 (MLR), the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TACT). This document sets out proposed modifications to all three, in accordance with the AR, so that auction platforms will be subject to certain aspects of the UK's anti-money laundering regime.

Amendments to Money Laundering Regulations 2007

3.2 The MLR are modified to include auction platforms as a 'relevant person' for the purposes of regulations 20 and 21, and Parts 4 and 5. Regulation 20 requires relevant persons to have in place policies and procedures in order to prevent activities related to money laundering and terrorist financing. Regulation 21 requires relevant persons to take appropriate measures to train employees in that regard. Parts 4 and 5 deal with supervision and enforcement.

3.3 The AR requires that auction platforms are supervised for compliance with the anti-money laundering provisions it contains. The MLR are amended so that the Financial Services Authority (FSA) is the supervisor for auction platforms. The FSA must monitor the compliance of auction platforms with customer due diligence, monitoring and record keeping, and notification requirements of the AR. They may also monitor compliance with regulations 20 and 21 of the MLR.

3.4 The MLR are also amended so that the FSA may impose a civil penalty on an auction platform which fails to comply with the customer due diligence and monitoring and record keeping requirements of the AR, or regulations 20 and 21 MLR. The penalty imposed may be of such an amount as the FSA considers appropriate – which for these purposes means effective, proportionate and dissuasive – in line with the penalties which may ordinarily be imposed by supervisors for breaches of the MLRs.

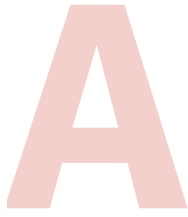
Amendments to Proceeds of Crime Act 2002 and Terrorism Act 2000

3.5 The AR requires that domestic legislation implementing various requirements of 3MLD, including provisions relating to the reporting of suspicious activity and breaches of the reporting requirements, is applied to auction platforms. These provisions are contained in Part 7 of POCA (in relation to criminal property) and Part 3 of TACT (in relation to terrorist property), which contain requirements and offences specific to "the regulated sector" – equivalent to those persons who are relevant persons for the purposes of the MLRs.

3.6 The definition of a business in the regulated sector for the purposes of Part 7 of POCA is amended to include platforms auctioning allowances in accordance with the AR. The definition of business in the regulated sector for the purpose of Part 3 of TACT is similarly amended.

Box 3.1: Questions on anti-money laundering, POCA and TACT

9. In your view, do the draft regulations in Annex B apply the Money Laundering Regulations effectively to cover the auctioning of emission allowances?
10. In your view, does the draft Order in Annex c apply the Proceeds of Crime Act and Terrorism Act provisions effectively to cover the auctioning of emission allowances?
11. What do you expect the costs of the amendments to anti-money laundering regulations, POCA and TACT will be for your organisation? In particular, what would be the additional costs of complying with the customer due diligence, monitoring, record keeping and notification requirements and the requirements to report suspicious activity?



Draft regulations amending the Financial Services and Markets Act 2000

STATUTORY INSTRUMENTS

2011 No.

FINANCIAL SERVICES AND MARKETS

Recognised Auction Platforms Regulations 2011

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury are a government department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the operation of regulated markets and clearing or settlement systems and in relation to insider dealing and market manipulation.

The Treasury, in exercise of the powers conferred on them under section 2(2) of the European Communities Act 1972, make these Regulations.

PART 1

General

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Recognised Auction Platforms Regulations 2011.
- (2) These Regulations come into force—
 - (a) for the purpose of regulations 1 to 6, and 8 to 23 of, and Schedules 2 and 3 to, the Regulations, on [];
 - (b) for the purpose of regulation 7 of, and Schedule 1 to, the Regulations, on [].
- (3) In these Regulations—
 - “the Act” means the Financial Services and Markets Act 2000⁽³⁾;

⁽¹⁾ S.I. 1993/2661; S.I. 2004/2642.
⁽²⁾ 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51); and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572).

“auction platform” means a platform on which auctions of emissions allowances are held in accordance with the emission allowance auctioning regulation;

“bid” means an offer in an auction of emission allowances to acquire a given volume of allowances at a specified price;

“emission allowance” means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which is valid for the purposes of meeting the requirements of the emission allowance trading directive, and which is transferable in accordance with the provisions of that directive;

“emission allowance trading directive” means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowances trading within the Community⁽⁴⁾;

“emission allowance auctioning regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to the emission allowance trading directive⁽⁵⁾;

“recognised auction platform” means a recognised investment exchange in relation to which a recognition order has been made;

“recognition order” means an order made under regulation 2;

“recognition requirements” mean the requirements set out in Part 5 of these Regulations together with any requirements set out in the emission allowance auctioning regulation.

(4) In these Regulations—

- (a) unless the contrary intention appears, expressions which are also used in the Financial Services and Markets Act 2000 have the same meaning as in that Act;
- (b) expressions which are also used in the emission allowance trading directive or the emission allowance auctioning regulation have the same meaning as in that directive or regulation; and
- (c) reference to a numbered section, unless otherwise stated, is a reference to a section in the Act.

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 requirements set out in Part 5 of these Regulations; 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 recognition requirements set out in Part 5 of these Regulations, and any requirements set out in the emission allowance auctioning regulation, 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.

⁽³⁾ 2000 c.8.

⁽⁴⁾ O.J. L 275 p 32, 25.10.2003.

⁽⁵⁾ O.J. L302 p 1, 18.11.2010.

(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 recognition requirements;
- (b) has failed, or is likely to fail, to comply with any obligation imposed on it by the emission allowance auctioning regulation or by any directly applicable Community regulation made under the markets in financial instruments directive; or
- (c) has failed to comply with any other obligation imposed on it by or under these Regulations.

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

- (a) the 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.

(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.

Revoking recognition

4.—(1) A recognition order made under regulation 2 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 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 of the Act 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 its intention to do so 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.

(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).

Market abuse on auction platforms

6. Part 8 of the Act (penalties for market abuse) applies in relation to an auction platform as it applies in relation to a prescribed market, but subject to the modifications set out in Schedule 1.

Application of certain provisions of the Act with modifications

7.—(1) In its application to a recognised investment exchange that is also a recognised auction platform, Part 18 of the Act, apart from Chapter 3A, has effect with the modifications set out in Schedule 2.

(2) Sections 152 to 156 of the Act shall apply to rules made by the Authority under section 293 in relation to a recognised investment exchange in its capacity as a recognised auction platform as they apply to rules made under that section in relation to any recognised investment exchange.

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

8. In its application to—

- (a) an EEA market operator (as defined in section 312D of the Act) which operates an auction platform, or
- (b) a recognised investment exchange which is a recognised auction platform,

Chapter 3A of Part 18 of the Act has effect with the modifications set out in Schedule 3.

PART 3

The Authority

Functions of the Authority

9.—(1) The Authority is to have the functions conferred on it by these Regulations.

(2) Reference in an enactment to—

- (a) functions conferred on the Authority by or under the Act (or any part of it), or
- (b) functions of the Authority,

includes a reference to functions conferred on the Authority by these Regulations.

PART 4

Amendments to secondary legislation

Amendment of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001

10.—(1) The Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001⁽⁶⁾ is amended as follows.

(2) In article 3, insert after the definition of “the Act”—

““auctioned products” has the meaning given in Article 4 of Commission Regulation (EU) No 1031/2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community⁽⁷⁾;

“recognised auction platform” means a body corporate or unincorporated association in respect of which there is in effect a recognition order made under regulation 2 of the Recognised Auction Platforms Regulations 2011 (application for recognition as auction platform);”.

⁽⁶⁾ S.I. 2001/996, amended by S.I. 2005/381; 2008/3053.

⁽⁷⁾ OJ No L 302, p.1, 18.11.2010.

(3) In article 4—

- (a) in the heading, insert at the end “and auction platforms”;
- (b) after paragraph (2), insert—

“(3) There are prescribed, as auction platforms to which subsections (2), (3), (5), (6), and (7) of section 118 apply, all recognised auction platforms, and all other auction platforms which have been appointed under the emission allowances auctioning regulation;

(4) There are prescribed, as auction platforms to which subsections (4) and (8) of section 118 apply, all recognised auction platforms;

(5) There are prescribed, as auction platforms to which subsection (8A) of section 118 as modified by the Recognised Auction Platforms Regulations 2011 applies, all auction platforms which have been appointed under the emission allowance auctioning regulation.”.

(4) In article 5—

- (a) renumber the existing provision as paragraph (1);
- (b) after paragraph (1), insert—

“(2) There are prescribed, as qualifying investments in relation to the auction platforms prescribed by article 4(1A), all auctioned products which are financial instruments within the meaning given in Article 4.1(17) of the market in financial instruments directive.

(3) There are prescribed, as qualifying investments in relation to the auction platforms prescribed by article 4(1B), all auctioned products which are not financial instruments within the meaning given in Article 4.1(17) of the market in financial instruments directive.”.

PART 5

Recognition Requirements for Auction Platforms

Interpretation

11. 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 recognition requirements

12.—(1) In considering whether a recognised auction platform or applicant satisfies recognition requirements applying to it under these Regulations (the “auction 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 recognition requirements applying to it under these Regulations, taking into account any arrangements that would be necessary to meet the auction requirements, and

- (b) take into account all relevant circumstances including the constitution of the person concerned and its regulatory provisions and practices within the meaning of section 302(1) of the Act.

(2) Without prejudice to the generality of paragraph (1), a recognised auction platform or applicant may satisfy recognition requirements applying to it under these Regulations 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 recognition requirements applying to it under these Regulations, but it is in addition a 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

13.—(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 12(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

14.—(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 12(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

15.—(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, persons admitted to bid 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 16(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

16.—(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 persons admitted to bid 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

17.—(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 exchange 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 of the Act.

Rules and consultation

18.—(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

19.—(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 and users or members 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;
- (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 Article 18 of the emission allowance auctioning regulation.

(4) Rules under this Regulation must enable—

- (a) an investment firm authorised under Article 5 of the markets in financial instruments directive, or
- (b) a credit institution authorised under the banking consolidation directive,

by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to apply for access to bid in auctions conducted by the auction platform on the same terms as a UK firm.

(5) The auction platform must make arrangements regularly to provide the Authority with a list of bidders.

(6) This regulation is without prejudice to the generality of regulation 16.

Choice of settlement facilities

20.—(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

21.—(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 16(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;
- (c) for charitable purposes.

Complaints

22.—(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 21(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 his 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 it is considered 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.

PART 6

Review

Review

23.—(1) Before the end of each review period, the Treasury must—

- (a) carry out a review of regulations 2 to 22,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the emission allowance auctioning regulation is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by regulations 2 to 22,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the last day on which any of regulations 2 to 22 come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Regulation 7

Modifications of Part 8 of the Act in relation to behaviour related to auction platforms

1. Section 118⁽⁸⁾ has effect as if—

- (a) in subsection (1)(a), for sub-paragraphs (i) and (ii) there were substituted—
 - “(i) qualifying investments which are offered for sale on a prescribed auction platform, or”;
- (b) in subsection (1)(b), the reference to subsections “(2) to (8)” were a reference in subsections “(2) to (8A)”;
- (c) in subsection (5)—
 - (i) after “transactions” there were inserted “, bids”,

⁽⁸⁾ Section 118 was substituted, together with ss 118A to 118C for the original s. 118 by S.I. 2005/381, regulation 5, Schedule 2, paragraph 1.

- (ii) for “relevant market” there were substituted “relevant auction platform”;
- (d) in subsection (6), after “transactions” there were inserted “bids”;
- (e) in subsection (8), for “or (7)” there were substituted “, (7) or (8A)”;
- (f) after that subsection there were inserted—

“(8A) The eighth is where the behaviour contravenes any of the provisions in Articles 38 to 41 of the emission allowance auctioning regulation.”.

2. Section 118A has effect as if in subsection (1), for paragraph (b), there were substituted—

“(b) in relation to—

- (i) qualifying investments which are offered for sale on a prescribed auction platform,
- (ii) in the case of section 118(2) and (3), investments which are related investments in relation to such qualifying investments”.

3. Section 118B has effect as if—

- (a) the existing provision were subsection (1) of the section;
- (b) in paragraphs (a) and (b) of that subsection, for “an issuer of qualifying investments” there were substituted “an auction platform or its operator, an auctioneer or auction monitor”;
- (c) after subsection (1) there were inserted—

“(2) For the purposes of this section—

“auctioneer” has the same meaning as in paragraph 20 of Article 3 of the emission allowance auctioning regulation;

“auction monitor” means the person appointed pursuant to Article 24 of the emission allowance auctioning regulation to act as auction monitor of auctions conducted under the emission allowance auctioning regulation.”.

4. Section 118C has effect as if—

- (a) in subsection (2)(c), for “the price of the qualifying investments” there were substituted “the price at which bids would be made for the qualifying investments”;
- (b) in subsection (4)—
 - (i) for “orders” there were each time substituted “bids”;
 - (ii) in paragraph (d), for “the price of those qualifying investments” there were substituted “the price at which bids would be made for those qualifying investments”;
- (c) in subsection (5)(b), for “the price of qualifying investments” there were substituted “the price at which bids would be made for qualifying investments”.

5. Section 119⁽⁹⁾ has effect as if in subsection (2)(d) and (e), after “specified markets” there were inserted “or specified auction platforms”.

6. Section 124 has effect as if in subsection (2), after “the market” there were inserted “or auction platform”.

7. Section 130A⁽¹⁰⁾ has effect as if—

- (a) in subsection (1)—
 - (i) in paragraph (a), for “the markets which are prescribed markets” there were substituted “the auction platforms which are prescribed auction platforms”, and
 - (ii) in paragraph (b), for “the prescribed markets” there were substituted “the prescribed auction platforms”;
- (b) in subsection (2), for “markets or descriptions of market” there were substituted “auction platforms or descriptions of auction platform”;
- (c) in subsection (3)—
 - (i) for the definition of “accepted market practices” there were substituted—

⁽⁹⁾ Paragraphs (d) and (e) were inserted into section 119(2) by S.I. 2005/381, regulation 5, Schedule 2, paragraph 2(1), (2).

⁽¹⁰⁾ Section 130A was inserted by S.I. 2005/381, regulation 5, Schedule 2, paragraph 3.

““accepted market practices” means practices that are reasonably expected on the auction platform or platforms in question, and are accepted by the Authority or, in the case of an auction platform situated in another EEA State, the competent authority of that EEA State, within the meaning of Article 35.5 of the emission allowance auctioning regulation;”;

(ii) for the definition of “dealing”, there were substituted—

““dealing”, in relation to an investment, means bidding or withdrawing a bid for the investment, or agreeing to bid or withdraw a bid for the investment,”

(iii) for the definition of “regular user”, there were substituted—

““regular user” in relation to a particular auction platform, means a reasonable person who regularly bids for qualifying investments on that platform.”

SCHEDULE 2

Regulation 8

Modifications of Part 18 of the Act in relation to recognised auction platforms

8. In section 285(2), reference to the exchange’s business as an investment exchange includes a reference to its business as an auction platform.

9. In section 291(3), reference to the obligations to which the body is subject under or by virtue of the Act is to be read as including a reference to the obligations to which it is subject under these Regulations or under the emission allowance auctioning regulation.

10. In section 292A⁽¹⁾—

(a) in subsection (1) reference to a recognition order is to be read as including a reference to a recognition order under regulation 2 of these Regulations;

(b) in subsections (2) and (4) references to the management of the exchange are to be read as including references to the management of the auction platform.

11. In section 293, in subsection (6)(a), reference to transactions effected on the exchange is to be read as including a reference to transactions effected on the auction platform.

12. In section 293A⁽¹²⁾, reference to any directly applicable Community regulation made under the markets in financial instruments directive is to be read as including a reference to any requirements under the emission allowance auctioning regulation to which the recognised investment exchange is subject as the operator of an auction platform.

13. In section 299(2), reference to whether the body concerned should remain a recognised body is to be read as including whether it should remain a recognised auction platform.

14. In section 300—

(a) in subsection (1)(a), reference to a recognition order under section 290 of the Act is to be read as including a reference to a recognition order under regulation 2 of these Regulations;

(b) in subsection (4), reference to the rules of an investment exchange is to be read as including a reference to rules made in relation to an auction platform.

15. In section 301F(4), reference to any financial market operated by the recognised investment exchange is to be read as including a reference to any auction platform operated by it.

16. Sections 300A to 300E, and sections 302 to 310 do not apply to a recognised investment exchange in its capacity as a recognised auction platform.

⁽¹⁾ Section 292A was inserted by S.I. 2007/126, regulation 3(2), Schedule 2, paragraphs 1 and 5.

⁽¹²⁾ Section 293A was inserted by S.I. 2007/126, Schedule 2, paragraphs 1 and 6.

Modifications to Chapter 3A of Part 18 of the Act in relation to recognised auction platforms and EEA market operators of auction platforms

17. In section 312A⁽¹³⁾—

- (a) in subsection (1), reference to a specified regulated market is to be read as including a reference to a specified auction platform;
- (b) in subsection (2), reference to a market is to be read as including a reference to an auction platform.

18. In section 312B—

- (a) in subsection (1), reference to a regulated market is to be read as including a reference to an auction platform;
- (b) in subsection (2), references to the markets in financial instruments directive are to be read as including references to the emission allowance auctioning regulation.

19. In section 312C—

- (a) in subsection (1), reference to a regulated market is to be read as including a reference to an auction platform;
- (b) in subsection (5)(b), reference to the third sub-paragraph of Article 42.6 of the markets in financial instruments directive (in the case of relevant arrangements relating to a regulated market) is to be read as including a reference to that provision as applied to auction platforms by Article 35 of the emission allowance auctioning regulation (in the case of arrangements relating to a recognised auction platform).

20. In section 312D, the definition of “applicable provision” shall be read as including, in addition to the cases set out in paragraphs (a) and (b)—

“(c) in the case of arrangements relating to an auction platform, the first sub-paragraph of Article 42.6 of the market in financial instruments directive as applied to auction platforms under Article 35 of the emission allowance auctioning regulation.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the obligations in Articles 35, 36 and 43 of Commission Regulation (EU) 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (O.J. L302/1, 18.11.2010) (the emission allowance auctioning regulation) to ensure that UK law implementing provisions of the Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments of 21 April 2004 (OJ L145, p1, 20.4.2004) in relation to regulated markets, and of Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation of 28 January 2003 (OJ L96, 12.4.2003, p16) apply to auction platforms auctioning emission allowances under the emission allowance auctioning regulation.

Regulation 2 of these Regulations sets out the procedure for applications to be recognised as a recognised auction platform. Only recognised investment exchanges will be eligible to make such an application.

Regulation 3 gives the Authority power to make directions in relation to a recognised auction platform where that platform appears to the Authority to be failing to comply with the recognition requirements or other obligations applying to it.

Regulation 4 provides for the revocation of a recognition order made under regulation 2.

Regulation 5 provides for the procedure to be followed where the Authority refuses to make a recognition order, proposes to give a direction under regulation 3 or to make a revocation order under regulation 4.

⁽¹³⁾ Sections 312A to 312D were inserted by S.I. 2007/126, Schedule 2, paragraphs 1 and 15.

Regulation 6 of, and Schedule 1 to, the Regulations apply the provisions of Part 8 (penalties for market abuse) of the Financial Services and Markets Act 2000 (“the Act”) to auction platforms with the modifications set out in the Schedule.

Regulation 7 of, and Schedule 2 to, the Regulations ensure that the provisions in Part 18 (recognised investment exchanges and clearing houses) of the Act will apply to a recognised investment exchange which is also a recognised auction platform with the modifications which are set out in Schedule 2. Regulation 7 also clarifies the application of sections 152 to 156 of the Act in relation to rules made by the Authority under section 293 in relation to recognised auction platforms.

Regulation 8 of, and Schedule 3 to, the Regulations modify the provisions of Chapter 3A (passport rights) of Part 18 of the Act in their application to recognised auction platforms, and EEA operators of auction platforms.

Regulation 9 ensures that any reference in legislation to functions of the Authority under the Act is understood to include the functions given to the Authority under these Regulations. This ensures that the powers given to the Authority for the performance of its functions under the Act will also apply in relation to the performance of its functions under these Regulations.

Regulation 10 amends the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 to prescribe auction platforms and make emission allowances qualifying investments for the purposes of Part 8 (penalties for market abuse) of the Act.

Part 5 of the Regulations set out the requirements which will have to be satisfied by any recognised investment exchange which wishes to be recognised as a recognised auction platform. Regulation 11 contains definitions relevant to Part 5. Regulation 12 indicates the factors which the Authority may take into account in assessing compliance with the requirements in Part 5. Those requirements are set out in detail in regulations 13 to 22, and cover matters ranging from the financial resources required by an auction platform to the arrangements it must have for investigating complaints.

Regulation 23 requires the Treasury to review the operation and effect of these Regulations within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.



Draft regulations amending the Money Laundering Regulations

STATUTORY INSTRUMENTS

2011 No. []

FINANCIAL SERVICES

Money Laundering (Amendment) Regulations 2011

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury are a government department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the prevention of money laundering and terrorist financing.

The Treasury, in exercise of the powers conferred on them under section 2(2) of the European Communities Act 1972, make these Regulations.

Citation and commencement

21. These Regulations may be cited as the Money Laundering (Amendment) Regulations 2011, and come into force on [].

Amendment of the Money Laundering Regulations 2007

22.—(1) The Money Laundering Regulations 2007⁽³⁾ are amended as follows.

(2) In regulation 2(1), insert at the appropriate place—

““auction platform” has the meaning given by regulation 3(3A);

“the emission allowance auctioning regulation” means Commission Regulation (EU) No. 1031/2010 of 12 November 2010⁽⁴⁾ on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the

⁽¹⁾ S.I. 2007/2133.

⁽²⁾ 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p.572). For the decision of the EEA Joint Committee in relation to Directive 2005/60/EC, see Decision No 87/2006 of 7th July 2006 amending Annex IX (Financial Services) to the EEA Agreement (OJ No L 289 19.10.2006, p. 23).

⁽³⁾ S.I. 2007/2157.

⁽⁴⁾ OJ L 302/1, 18.11.2010.

European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community;”.

(3) In regulation 3—

(a) after paragraph (1), insert—

“(1A) Regulations 20 and 21, and Parts 4 and 5, of these Regulations apply to an auction platform acting in the course of business carried on by it in the United Kingdom, and such an auction platform is a relevant person for the purposes of those regulations and those Parts.”;

(b) after paragraph (13), insert—

“(13A) “Auction platform” means a platform on which auctions of emission allowances are held in accordance with the emission allowance auctioning regulation, when auctioning two-day spot or five-day futures within the meanings given by Article 3 of that Regulation.”.

(4) In regulation 20(4) and (5), after “financial institution” (in both places where it occurs) insert “and an auction platform”.

(5) In regulation 23(1)(a)⁽⁵⁾, after paragraph (iv), insert—

“(v) auction platforms;”.

(6) In regulation 24, after paragraph (1), insert—

“(1A) The Authority, when carrying out its supervisory functions in relation to an auction platform—

(a) must effectively monitor the auction platform’s compliance with—

(i) the customer due diligence requirements of Articles 19 and 20(6) of the emission allowance auctioning regulation;

(ii) the monitoring and record keeping requirements of Article 54 of the emission allowance auctioning regulation;

(iii) the notification requirements of Article 55(2) and (3) of the emission allowance auctioning regulation; and

(b) may monitor the auction platform’s compliance with regulations 20 and 21 of these Regulations.”.

(7) In regulation 42—

(a) in paragraph (1), after “a relevant person” insert “(except an auction platform)”;

(b) after paragraph (1), insert—

“(1A) A designated authority may impose a penalty of such amount as it considers appropriate on an auction platform which fails to comply with—

(a) the customer due diligence requirements of Articles 19 and 20(6) of the emission allowance auctioning regulation;

(b) the monitoring and record keeping requirements of Article 54 of the emission allowance auctioning regulation; or

(c) regulation 20(1), (4) or (5) or 21 of these Regulations;

and, for this purpose, “appropriate” means effective, proportionate and dissuasive.”;

(c) in paragraph (2), after “paragraph (1)” insert “or (1A)”.

Date

Name
Name
Two of the Lords Commissioners of Her Majesty’s Treasury

⁽⁵⁾ Regulation 23(1)(a) was amended by S.I 2011/99.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Money Laundering Regulations 2007 (“the 2007 Regulations”) so that specific provisions of the 2007 Regulations apply to an auction platform auctioning certain emissions allowances. Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (“the Commission Regulation”) sets out the framework for the auctioning of emissions allowances. The Commission Regulation requires Member States to apply certain of their domestic measures implementing EU measures on money laundering and terrorist financing to the auctioning of emissions allowances.

The effect of the amendments is that an auction platform is a “relevant person” for the purposes of regulations 20 and 21 of the 2007 Regulations, and must have in place policies and procedures in order to prevent activities related to money laundering and terrorist financing, and take appropriate measures to train employees in that regard.

An auction platform is also a “relevant person” for the purposes of Parts 4 (supervision) and 5 (enforcement) of the 2007 Regulations, so that the powers of the relevant supervisory authority and enforcement authorities may be exercised in relation to a platform.

The Financial Services Authority is the supervisor for auction platforms, responsible for monitoring their compliance with certain provisions of the Commission Regulation and of the 2007 Regulations.

The Financial Services Authority may impose a civil penalty on an auction platform which breaches the anti-money laundering and terrorist financing requirements of the Commission Regulation and the requirements of the 2007 Regulations to which it is subject.



Order amending the Proceeds of Crime Act 2002 and the Terrorism Act 2000

STATUTORY INSTRUMENTS

2011 No. []

PREVENTION AND SUPPRESSION OF TERRORISM

PROCEEDS OF CRIME

The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2011

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Order in exercise of the powers conferred on them by paragraph 5 of Schedule 3A to the Terrorism Act 2000⁽¹⁾, and paragraph 5 of Schedule 9 to the Proceeds of Crime Act 2002⁽²⁾.

Citation and commencement

23. This Order may be cited as the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2011 and comes into force on [].

Amendment of Schedule 3A to the Terrorism Act 2000

24.—(1) Part 1 of Schedule 3A to the Terrorism Act 2000 (regulated sector)⁽³⁾ is amended as follows.

(2) In paragraph 1 (business in the regulated sector)—

(a) after sub-paragraph (1)(r) insert—

“(s) the auctioning by an auction platform of two-day spot or five-day futures, within the meanings given by Article 3 of the Emission Allowance Auctioning Regulation.”;

(b) after sub-paragraph (8), insert—

⁽¹⁾ 2000 c.11. Schedule 3A was inserted by the Anti-terrorism, Crime and Security Act 2001, section 3, Schedule 2, Part 3, paragraphs 5(1) and (6).

⁽²⁾ 2002 c. 29.

⁽³⁾ Part 1 of Schedule 3A was substituted by S.I. 2007/3288 with effect from 15 December 2007. Part 1 was subsequently amended by S.I.s 2008/948 and 2011/99.

“(9) For the purposes of sub-paragraph (1)(s) “auction platform” means a platform on which auctions of emissions allowances are held in accordance with the Emission Allowance Auctioning Regulation.”.

(3) In paragraph 3(1) (interpretation), at the appropriate place insert—

““the Emission Allowance Auctioning Regulation” means Commission Regulation (EU) No. 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community;”.

Amendment of Schedule 9 to the Proceeds of Crime Act 2002

25.—(1) Schedule 9 to the Proceeds of Crime Act 2002 (regulated sector and supervisory authorities) ⁽⁴⁾ is amended as follows.

(2) In paragraph 1 (business in the regulated sector)—

(a) after sub-paragraph (1)(r) insert—

“(s) the auctioning by an auction platform of two-day spot or five-day futures, within the meanings given by Article 3 of the Emission Allowance Auctioning Regulation.”;

(b) after sub-paragraph (8), insert—

“(9) For the purposes of sub-paragraph (1)(s) “auction platform” means a platform on which auctions of emissions allowances are held in accordance with the Emission Allowance Auctioning Regulation.”.

(3) In paragraph 3(1) (interpretation), at the appropriate place insert—

““the Emission Allowance Auctioning Regulation” means Commission Regulation (EU) No. 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community;”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the definition of a business in the regulated sector for the purposes of Part 3 of the Terrorism Act 2000 (c.11) (terrorist property) and Part 7 of the Proceeds of Crime Act 2002 (c.29) (money laundering) by adding the activity of auctioning certain emission allowances. Those Parts contain provisions relating to the reporting of suspicious activity, including requirements and offences specific to “the regulated sector”.

The framework for the auctioning of emissions allowances is set out in Commission Regulation (EU) No. 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (OJ No. L 302/1, 18.11.10). The Regulation requires Member States to apply certain of their domestic measures implementing EU measures on money laundering and terrorist financing to the auctioning of emissions allowances.

⁽⁴⁾ Parts 1 and 2 of Schedule 9 were substituted by S.I. 2007/3287 with effect from 15 December 2007. Part 1 was subsequently amended by S.I. 2011/99.

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Summary of questions

Questions on auction platforms

1. Do you consider that the requirements in the draft regulations reflect those provisions of Title III of MiFID which it is appropriate to apply to platforms for the auctioning of emissions allowances? If not, please identify which provisions are missing (or, conversely, any that have been applied which you consider are unnecessary).
2. Do you agree that it is appropriate not to apply Chapter 2 of Part 18 (Competition Scrutiny) to recognised auction platforms?
3. Do you have any comments on the general approach taken in the draft regulations of providing for a new category of recognised auction platform, based on RIE status?
4. How much do you expect it will cost your organisation to comply with the regulatory requirements for becoming a recognised auction platform, both initial one-off costs and on-going annual costs? Would you be able to broadly describe the main costs? Can you identify quantitative or qualitative benefits of becoming a recognised auction platform?

Questions on market abuse

5. In your view, do the draft regulations in Annex A apply market abuse provisions effectively to cover the auctioning of emissions allowances?
6. Do you support the analysis of the regulatory treatment of five-day futures, in particular the suggestion that the UK's domestic provisions for market abuse are extended to five-day futures? We welcome views as to the usefulness of having in place a more robust regulatory framework, with the specificities of the carbon market in mind.
7. Do you have any comments on the respective treatment of two-day spot and five-day futures under the market abuse framework proposed?
8. Do you expect that the extension of the existing market abuse regime with modifications to cover auctions of emissions allowances in the form of two day spots will impose additional costs on your organisation, either one-off or recurring annual costs? Are you able to identify quantitative or qualitative benefits?

Questions on anti-money laundering, POCA and TACT

9. In your view, do the draft regulations in Annex B apply the Money Laundering Regulations effectively to cover the auctioning of emission allowances?
10. In your view, does the draft Order in Annex C apply the Proceeds of Crime Act and Terrorism Act provisions effectively to cover the auctioning of emission allowances?
11. What do you expect the costs of the amendments to anti-money laundering regulations, POCA and TACT will be for your organisation? In particular, what would be the additional costs of complying with the customer due diligence, monitoring, record keeping and notification requirements and the requirements to report suspicious activity?

HM Treasury contacts

This document can be found in full on our website at:
hm-treasury.gov.uk

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