

**RECOGNISED AUCTION PLATFORMS (PENALTY AND CENSURE POLICY)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of its powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 1 November 2012.

Amendments to the Handbook

- C. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.
- D. The Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) is amended in accordance with Annex B to this instrument.

Material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex C to this instrument.

Citation

- F. This instrument may be cited as the Recognised Auction Platforms (Penalty and Censure Policy) Instrument 2012.

By order of the Board
31 October 2012

Annex A

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text which is to be inserted as a new table after the 'Electronic Money Regulations' table in DEPP 2 Annex 1G.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

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<u>Recognised Auction Platforms Regulations 2011</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 5A</u>	<u>where the FSA is proposing or deciding to publish a statement censuring an RAP, or to impose a financial penalty on an RAP</u>	<u>REC 2A.4</u>	<u>RDC</u>

Annex B

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

After REC 2A.3, insert the following new section. The text is not underlined.

2A.4 Power and procedure for RAP penalties and censures

- 2A.4.1 G Under regulation 5A (Power to impose civil penalties) of the *RAP Regulations*, where the *FSA* considers that an *RAP* has contravened any requirement in articles 19, 20(7), 21(1) or (2), or 54 of the *auction regulation*, the *FSA* has the power to impose a civil penalty on that *RAP*.
- 2A.4.2 G Where the *FSA* is entitled to impose a penalty on an *RAP*, it may instead publish a statement censuring it.
- 2A.4.3 G The provisions of the *auction regulation* referred to in REC 2A.4.1G are directly applicable to an *RAP* and require it to, in summary:
- (1) only grant admission to bid to applicants that comply with the conditions set out in article 19 of the *auction regulation*, including the prerequisite that the applicants are eligible to bid in accordance with article 18 of the *auction regulation*;
 - (2) require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the *RAP*;
 - (3) refuse to grant admission to bid, or revoke or suspend that admission, to any person:
 - (a) that is not, or is no longer, eligible to bid (under article 18 of the *auction regulation*); does not meet, or no longer meets, the requirements of articles 18, 19 or 20 of the *auction regulation*; or is wilfully or repeatedly in breach of the *auction regulation*, the terms and conditions of its admission to bid or other related instructions or agreements; or
 - (b) where the *RAP* suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities under the *auction regulation* to pursue or apprehend the perpetrators of those activities; and
 - (4) monitor the relationship with bidders admitted to bid in its auctions.

- 2A.4.4 G The power in regulation 5A of the *RAP Regulations* to impose a civil penalty or publish a statement adds to the *FSA's* other supervisory powers in relation to *RAPs* (see *REC 4*) and its power to impose penalties on an *RAP* under the *Money Laundering Regulations*. The *FSA* will use this power under the *RAP Regulations* where it is appropriate to do so and with regard to the relevant factors listed in *DEPP 6.2.1G*. In deciding between a civil penalty or a public statement, the *FSA* will also have regard to the relevant factors listed in *DEPP 6.4*.
- 2A.4.5 G The *FSA* will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the *RAP Regulations* or the *Money Laundering Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FSA* expects to carry out a scoping visit early on in the enforcement process in most cases.
- 2A.4.6 G Where the *FSA* uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in *DEPP 6.5* to *6.5D* in determining the appropriate level of financial penalty.
- 2A.4.7 G The *FSA* will also have regard to whether the person followed any of the *FSA's* guidance and will not take action under regulation 5A where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.
- 2A.4.8 G When the *FSA* proposes or decides to take action against an *RAP* in exercise of its power in regulation 5A of the *RAP Regulations*, it must give the *RAP* a *warning notice* or a *decision notice* respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a *warning notice*, the *RAP* has a right to make representations on the *FSA's* proposed decision.
- 2A.4.9 G Where the *FSA* is proposing or deciding to publish a statement censuring an *RAP* or impose a penalty on the *RAP* under regulation 5A of the *RAP Regulations*, the *FSA's* decision maker will be the *RDC*. This is to ensure that the *FSA's* power to censure or impose a penalty on an *RAP* has the same layer of separation in the decision making process, and is exercised consistently with, similar penalty and censure powers of the *FSA* under other legislation. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*. An *RAP* that receives a *decision notice* under regulation 5A of the *RAP Regulations* may refer the matter to the *Tribunal*.
- 2A.4.10 G Sections 393 and 394 of the *Act* apply to notices referred to in this section. See *DEPP 2.4* (Third party rights and access to *FSA* material).
- 2A.4.11 G As with cases under the *Act*, the *FSA* may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in *DEPP 6.7* applies to penalties

imposed under the *RAP Regulations*.

2A.4.12 G The *FSA* will apply the approach to publicity that it has outlined in *EG 6*.

Annex C

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text.

19 Non-FSMA powers

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Recognised Auction Platforms Regulations 2011

19.120 The FSA's policy for using the powers given to it by the *RAP Regulations* is set out in *REC*. This includes, for example, its policy in relation to the power to impose a financial penalty on or censure an *RAP* (*REC 2A.4*) and its policy in relation to the power to give directions to an *RAP* (*REC 4.6*).