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SCHEDULES

[^{F1}SCHEDULE 1ZA

THE FINANCIAL CONDUCT AUTHORITY

Textual Amendments

- F1** Schs. 1ZA, 1ZB substituted for Sch. 1 (24.1.2013 for specified purposes, 19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 3](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)\(c\)\(2\), Sch. Pts. 2, 3, 4](#); [S.I. 2013/423, art. 3, Sch.](#)

PART 3

PENALTIES AND FEES

Penalties

- 19 In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the FCA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- 20 (1) The FCA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The FCA's "penalty receipts" in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
- (3) The FCA's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—
- the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
 - the recovery of penalties imposed under this Act.
- (4) For this purpose the FCA's enforcement powers are—
- its powers under any of the provisions mentioned in section 133(7A),
 - its powers under section 56 (prohibition orders),
 - its powers under Part 25 of this Act (injunctions and restitution),
 - its powers under any other enactment specified by the Treasury by order,
 - its powers in relation to the investigation of relevant offences, and
 - its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) "Relevant offences" are—
- offences under FSMA 2000,
 - offences under subordinate legislation made under that Act,

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- (c) offences falling within section 402(1) of that Act,
 - (d) offences under Part 7 of the Financial Services Act 2012, and
 - (e) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
 - (b) relate to the calculation and timing of the deduction in respect of the FCA's enforcement costs, and
 - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the FCA to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the FCA has imposed under this Act, or
 - (b) the FCA's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 21 (1) The FCA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 20(1) provides, are retained by the FCA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of regulated persons.
- (2) “Regulated persons” means—
- (a) authorised persons,
 - (b) recognised investment exchanges,
 - (c) issuers of securities admitted to the official list, and
 - (d) issuers who have requested or approved the admission of financial instruments to trading on a regulated market.
- (3) The financial penalty scheme may, in particular, make different provision with respect to different classes of regulated person.
- (4) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the FCA in any financial year of the FCA do not receive any benefit under the scheme in the following financial year.
- (5) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).
- 22 (1) The scheme details must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the FCA must publish a draft of the proposed scheme in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the FCA within a specified time.

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- (4) Before making the scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the FCA makes the proposed scheme, it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with sub-paragraph (3), and
 - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The FCA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The FCA may charge a reasonable fee for providing a person with a copy of—
 - (a) a draft published under sub-paragraph (2);
 - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

Fees

- 23 (1) The FCA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
- (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
 - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
 - (c) to maintain adequate reserves.
- (2) The “qualifying functions” of the FCA are—
- (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 1A(6), and
 - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.
- (3) In sub-paragraph (1)(b)—
- “relevant borrowing” means any money borrowed by the FCA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and
- “relevant commencement expenses” means expenses incurred by the FCA—
- (a) in preparation for the exercise of functions by the FCA under this Act, or
 - (b) for the purpose of facilitating the exercise by the FCA of those functions or otherwise in connection with their exercise by it.

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- (4) Neither section 1A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if any of those things were done at a time when the FCA was known as the Financial Services Authority).
- (6) In the case of rules made under Part 6 of this Act, the rules may, in particular, require the payment of fees in respect of—
 - (a) the continued inclusion of securities or persons in any list or register required to be kept by the FCA as a result of any provision made by or under that Part,
 - (b) access to any list or register within paragraph (a), and
 - (c) the continued admission of financial instruments to trading on a regulated market.
- (7) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (8) Any fee which is owed to the FCA under any provision made by or under this Act may be recovered as a debt due to the FCA.

Services for which fees may not be charged

- 24 The power conferred by paragraph 23 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the FCA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
 - (b) a fee to be paid by any person whose application for approval under section 59 has been granted.]

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