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## SCHEDULES

### SCHEDULE 12

#### AMENDMENTS OF PARTS 11 AND 23 OF FSMA 2000

#### PART 2

##### PART 23 OF FSMA 2000: PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

- 16 (1) Section 347 (record of authorised persons) is amended as follows.
- (2) In subsections (1) to (6), for “Authority”, in each place, substitute “ FCA ”.
- (3) Omit subsection (1)(f).
- (4) In subsection (2), in paragraph (e)—
- (a) omit “or recognised clearing house,”, and
- (b) omit “or clearing house”.
- (5) In subsection (8), for “Authority” substitute “ FCA or the PRA ”.

#### Commencement Information

**II** Sch. 12 para. 16 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 17 After section 347 insert—

#### “347A Duty of PRA to disclose information relevant to the record

- (1) The PRA must, for the purpose of assisting the FCA to comply with its duty under section 347—
- (a) notify the FCA if the information included in the record as required under section 347(2)(a) appears to the PRA to be incomplete or inaccurate,
- (b) if it makes a prohibition order relating to an individual, provide the FCA with information falling within section 347(2)(f) in relation to that order,
- (c) where it is the appropriate regulator in relation to an approved person, provide the FCA with information falling within section 347(2)(g) in relation to that approved person, and
- (d) where the FCA has notified the PRA that it considers it appropriate to include in the record information of a certain description, disclose to the FCA such information of that description as the PRA has in its possession.

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- (2) The duty to provide information under this section does not apply to information which the PRA reasonably believes is in the possession of the FCA.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348.
- (4) This section is without prejudice to any other power to disclose information.
- (5) In this section references to the “record” are to the record maintained under section 347.”

**Commencement Information**

**I2** Sch. 12 para. 17 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 18 (1) Section 348 (restrictions on disclosure of information) is amended as follows.
- (2) In subsection (2)(b)—
    - (a) for “Authority” substitute “ FCA, the PRA ”, and
    - (b) omit “, the competent authority for the purposes of Part VI”.
  - (3) In subsection (5)—
    - (a) for paragraph (a) substitute—
      - “(a) the FCA;
      - (aa) the PRA;”,
    - (b) omit paragraph (b),
    - (c) in paragraph (d), for “139E” substitute “ 166A ”, and
    - (d) after paragraph (e) insert—
      - “(ea) a person who is or has been engaged to provide services to a person mentioned in those paragraphs;”.
  - (4) In subsection (6)—
    - (a) in paragraph (a), for “the competent authority” substitute “ the FCA ”,
    - (b) in paragraph (b), for “Authority” substitute “ FCA, the PRA ”, and
    - (c) omit paragraph (c).
  - (5) In the heading for “Authority” substitute “ FCA, PRA ”.

**Commencement Information**

**I3** Sch. 12 para. 18 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 19 (1) Section 349 (exceptions from section 348) is amended as follows.
- (2) In subsection (2)(c), for “Authority” substitute “ FCA or the PRA ”.
  - (3) In subsection (3A)(a), for “Authority” substitute “ FCA or the PRA ”.
  - (4) In subsection (3B)(c), for “Authority's functions” substitute “ functions of the FCA or the PRA ”.

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**Commencement Information**

**I4** Sch. 12 para. 19 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

20 (1) Section 350 (disclosure of information by HMRC) is amended as follows.

(2) For subsection (1) substitute—

“(1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—

- (a) the FCA or the PRA, if the disclosure is made for the purpose of assisting or enabling that regulator to discharge its functions under this or any other Act, or
- (b) the Secretary of State, if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.”

(3) In subsection (4), for “subsection (1)” substitute “ subsection (1)(b) ”.

**Commencement Information**

**I5** Sch. 12 para. 20 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

21 Omit section 351 (competition information).

**Commencement Information**

**I6** Sch. 12 para. 21 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

22 In section 351A (disclosure under the UCITS directive), in subsection (1), for “the Authority” substitute “ the FCA or the PRA ”.

**Commencement Information**

**I7** Sch. 12 para. 22 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

23 (1) In section 353 (removal of other restrictions on disclosure), in subsection (1)(b)—

- (a) for “Authority”, in the first place, substitute “ FCA or the PRA ”, and
- (b) for “Authority”, in the second place, substitute “ either of them ”.

**Commencement Information**

**I8** Sch. 12 para. 23 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

24 After section 353 insert—

*“Information received from Bank of England*

**353A Information received from Bank of England**

(1) A regulator must not disclose to any person specially protected information.

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- (2) “Specially protected information” is information in relation to which the first and second conditions are met.
- (3) The first condition is that the regulator received the information from—
  - (a) the Bank of England (“the Bank”), or
  - (b) the other regulator where that regulator had received the information from the Bank.
- (4) The second condition is that the Bank notified the regulator to which it disclosed the information that the Bank held the information for the purpose of its functions with respect to any of the following—
  - (a) monetary policy;
  - (b) financial operations intended to support financial institutions for the purposes of maintaining stability;
  - (c) the provision of private banking services and related services.
- (5) The notification referred to in subsection (4) must be—
  - (a) in writing, and
  - (b) given before, or at the same time as, the Bank discloses the information.
- (6) The prohibition in subsection (1) does not apply—
  - (a) to disclosure by one regulator to the other regulator where the regulator making the disclosure informs the other regulator that the information is specially protected information by virtue of this section;
  - (b) where the Bank has consented to disclosure of the information;
  - (c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;
  - (d) to information which the regulator is required to disclose in pursuance of any EU obligation.
- (7) In this section references to disclosure by or to a regulator or by the Bank include references to disclosure by or to—
  - (a) persons who are, or are acting as,—
    - (i) officers of, or members of the staff of, the regulator, or
    - (ii) officers, employees or agents of the Bank, or
  - (b) auditors, experts, contractors or investigators appointed by the regulator or the Bank under powers conferred by this Act or otherwise.
- (8) References to disclosure by a regulator do not include references to disclosure between persons who fall within any paragraph of subsection (7) (a) or (b) in relation to that regulator.
- (9) Each regulator must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (6), by those who are or have been—
  - (a) its officers or members of staff (including persons acting as its officers or members of staff);

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- (b) auditors, experts, contractors or investigators appointed by the regulator under powers conferred by this Act or otherwise;
- (c) persons to whom the regulator has delegated any of its functions.”

#### Commencement Information

**I9** Sch. 12 para. 24 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

25 For section 354 substitute—

#### “354A FCA's duty to co-operate with others

- (1) The FCA must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—
  - (a) similar to those of the FCA, or
  - (b) in relation to the prevention or detection of financial crime.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the PRA (but see sections 3D and 3Q).
- (3) The FCA must take such steps as it considers appropriate to co-operate with—
  - (a) the Panel on Takeovers and Mergers;
  - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
  - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the FCA to be similar to those of the Panel on Takeovers and Mergers.
- (4) Co-operation may include the sharing of information which the FCA is not prevented from disclosing.
- (5) “Financial crime” has the meaning given in section 1H(3).

#### 354B PRA's duty to co-operate with others

- (1) The PRA must take such steps as it considers appropriate to co-operate with—
  - (a) other persons (whether in the United Kingdom or elsewhere) who have functions similar to those of the PRA, and
  - (b) other bodies that have functions relevant to financial stability.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the FCA (but see sections 3D and 3Q).
- (3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

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### **354C PRA's duty to provide information to Bank of England**

- (1) The PRA must disclose to the Bank of England (“the Bank”) any information in its possession that it thinks will or may assist the Bank in achieving its financial stability objective.
- (2) The duty in subsection (1) applies whether or not the Bank has requested that the information be disclosed to it.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure—
  - (a) is prohibited by or under section 348 or any other enactment;
  - (b) is incompatible with any EU obligation;
  - (c) would constitute or be punishable as a contempt of court.
- (4) This section is without prejudice to any other power to disclose information.
- (5) The Bank's financial stability objective is the objective set out in section 2A(1) of the Bank of England Act 1998.
- (6) In this section “enactment” includes—
  - (a) an Act of the Scottish Parliament,
  - (b) Northern Ireland legislation, and
  - (c) a Measure or Act of the National Assembly for Wales.”

#### **Commencement Information**

**I10** Sch. 12 para. 25 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

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