

Status: Point in time view as at 01/04/2013.

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SCHEDULES

SCHEDULE 9

DISCIPLINE AND ENFORCEMENT

PART 6

NOTICE PROCEDURES

- 26 (1) Section 387 (warning notices) is amended as follows.
- (2) In subsection (1)(a), for “Authority” substitute “ regulator giving the notice (“the regulator concerned”) ”.
- (3) After subsection (1) insert—
- “(1A) Where the PRA is the regulator concerned and the FCA proposes to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the warning notice given by the PRA must—
- (a) state that fact, and
- (b) give the reasons for the FCA's proposal.”
- (4) In subsection (2)—
- (a) for “The warning” substitute “ A warning ”,
- (b) for “28 days” substitute “ 14 days ”, and
- (c) for “Authority” substitute “ regulator concerned ”.
- (5) In subsection (3), for “The Authority” substitute “ The regulator concerned ”.
- (6) After subsection (3) insert—
- “(3A) Where the PRA receives any representations in response to a warning notice given by it under section 55X(1) or (2) or 62(2) in a case falling within subsection (1A) it must—
- (a) if the representations are in writing, give a copy to the FCA, or
- (b) if they are not in writing and have not been given directly to the FCA by the person making them, provide the FCA with a record of them.”
- (7) In subsection (4), for “The Authority” substitute “ The regulator concerned ”.

Commencement Information

II Sch. 9 para. 26 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 27 (1) Section 388 (decision notices) is amended as follows.

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- (2) In subsection (1)(b), for “the Authority's reasons” substitute “ the reasons of the regulator giving the notice (“the regulator concerned”) ”.
- (3) After subsection (1) insert—
- “(1A) Where the PRA is the regulator concerned and the FCA has decided to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the decision notice given by the PRA must—
- (a) state that fact, and
 - (b) give the reasons for the FCA's decision.”
- (4) In subsections (3) and (4), for “The Authority” substitute “ The regulator concerned ”.

Commencement Information

I2 Sch. 9 para. 27 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 28 In section 389(1) (notices of discontinuance)—
- (a) for “the Authority” substitute “ a regulator ”, and
 - (b) in paragraphs (a) and (b), after “notice” insert “ given by it ”.

Commencement Information

I3 Sch. 9 para. 28 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 29 (1) Section 390 (final notices) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
 - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (3) In subsection (2)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,
 - (b) for “the Authority”, in the second place, substitute “ the regulator ”, and
 - (c) for “a final notice” substitute “ the notice required by subsection (2A) ”.
- (4) After that subsection insert—
- “(2A) The notice required by this subsection is—
- (a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and
 - (b) in any other case, a final notice.”
- (5) In subsections (9) and (10), for “the Authority” substitute “ the regulator giving the notice ”.

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Commencement Information

I4 Sch. 9 para. 29 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 30 (1) Section 391 (publication) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In the case of a warning notice falling within subsection (1ZB)—
- (a) neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice,
 - (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the regulator giving the notice has published those details, and
 - (c) after consulting the persons to whom the notice is given or copied, the regulator giving the notice may publish such information about the matter to which the notice relates as it considers appropriate.
- (1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice or any details concerning it.
- (1ZB) A warning notice falls within this subsection if it is given under—
- (a) section 63B;
 - (b) section 67;
 - (c) section 87M;
 - (d) section 88B;
 - (e) section 89K;
 - (f) section 89R;
 - (g) section 92;
 - (h) section 126;
 - (i) section 131H;
 - (j) section 192L;
 - (k) section 207;
 - (l) section 312G;
 - (m) section 345B (whether as a result of section 345(2) or 345A(3) or section 249(1)).”
- (3) In subsections (1A), (2) and (3), for “Authority” substitute “ regulator giving the notice ”.
- (4) In subsection (4)—
- (a) for “The Authority” substitute “ The regulator giving a decision or final notice ”, and
 - (b) for “a decision notice or final notice” substitute “ the notice ”.
- (5) In subsection (5), for “Authority” substitute “ regulator giving the notice ”.
- (6) For subsection (6) substitute—
- “(6) The FCA may not publish information under this section if, in its opinion, publication of the information would be—

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- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
 - (b) prejudicial to the interests of consumers, or
 - (c) detrimental to the stability of the UK financial system.
- (6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
 - (b) prejudicial to the safety and soundness of PRA-authorized persons, or
 - (c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.”
- (7) In subsection (7), for “Authority” substitute “ regulator ”.
- (8) In subsection (7A), for “the Authority” substitute “ a regulator ”.

Commencement Information

I5 Sch. 9 para. 30 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 31 (1) Section 392 (application of sections 393 and 394) is amended as follows.
- (2) In paragraph (a)—
- (a) for “54(1)” substitute “ 55Z(1) ”, and
 - (b) after “131H(1),” insert “ 192L(1), ”.
- (3) In paragraph (b)—
- (a) for “54(2)” substitute “ 55Z(2) ”, and
 - (b) after “131H(4),” insert “ 192L(4), ”.

Commencement Information

I6 Sch. 9 para. 31 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 32 (1) Section 393 (third party rights) is amended as follows.
- (2) In subsections (1)(b) and (2), for “Authority” substitute “ regulator giving the notice ”.
- (3) In subsection (3)—
- (a) for “28 days” substitute “ 14 days ”, and
 - (b) for “the Authority” substitute “ the regulator giving the notice ”.
- (4) In subsections (4)(b), (6), (7), (9)(b) and (11)(b), for “the Authority” substitute “ the regulator giving the notice ”.
- (5) In subsection (12), for “which the Authority must disclose” substitute “ to which access must be given ”.

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Commencement Information

17 Sch. 9 para. 32 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 33 (1) Section 394 (access to Authority material) is amended as follows.
- (2) In subsection (1)—
- (a) in the opening words, for “the Authority” substitute “ a regulator ”, and
 - (b) in paragraph (b), for “, in the opinion of the Authority,” substitute “ , in the regulator’s opinion, ”.
- (3) In subsection (2), for “the Authority”, in both places, substitute “ the regulator giving the notice ”.
- (4) In subsection (3), for “The Authority” substitute “ The regulator giving the notice ”.
- (5) In subsection (4)—
- (a) for “the Authority” substitute “ the regulator giving the notice ”, and
 - (b) for “the Authority’s” substitute “the regulator’s”.
- (6) In subsection (5), for “the Authority” substitute “ the regulator giving the notice ”.
- (7) In subsection (6)—
- (a) in paragraph (a), for “the Authority” substitute “ the regulator giving the notice ”, and
 - (b) in paragraph (b), for “the Authority in connection with the matter to which the notice to which this section applies” substitute “ the regulator giving the notice in connection with the matter to which that notice ”.
- (8) In the heading, for “Authority” substitute “ FCA or PRA ”.

Commencement Information

18 Sch. 9 para. 33 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 34 (1) Section 395 (the Authority’s procedures) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Each regulator must determine the procedure that it proposes to follow in relation to the following—
- (a) a decision which gives rise to an obligation to give a supervisory notice,
 - (b) in the case of the FCA, a decision which—
 - (i) gives rise to an obligation for it to give a warning notice or decision notice, or
 - (ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice,
 - (c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii), and

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- (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”
- (3) In subsection (2), omit the words from “, that the decision” to the end and insert “that—
- (a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—
- (i) by a person not directly involved in establishing the evidence on which the decision is based, or
- (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,
- (b) a decision falling within paragraph (d) of subsection (1) is taken—
- (i) by a person other than the person by whom the decision was first proposed, or
- (ii) by 2 or more persons not including the person by whom the decision was first proposed, and
- (c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).”
- (4) In subsection (3), for the words from “taken” to the end substitute “taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—
- (a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
- (b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.”
- (5) In subsection (5)—
- (a) for “The Authority” substitute “ Each regulator ”, and
- (b) for “the procedure” substitute “ its procedure ”.
- (6) In subsection (6)—
- (a) for “the Authority” substitute “ the regulator issuing it ”, and
- (b) for “it” substitute “ the statement ”.
- (7) In subsection (7), for “The Authority” substitute “ The regulator issuing the statement ”.
- (8) In subsection (8)—
- (a) for “The Authority” substitute “ The regulator issuing a statement under this section ”, and
- (b) for “any statement which it issues under this section” substitute “ the statement ”.
- (9) In subsection (9)—
- (a) for “giving” substitute “ a regulator gives ”,

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- (b) after “decision notice,” insert “ other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii) ”, and
 - (c) for “the Authority” substitute “ the regulator ”.
- (10) After subsection (9) insert—
- “(9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.”
- (11) In subsection (10)—
- (a) for “the Authority” substitute “ a regulator ”, and
 - (b) for “the procedure” substitute “ its procedure ”.
- (12) In subsection (11), for “The Authority's” substitute “A regulator's”.
- (13) In subsection (13), for paragraph (a) substitute—
- “(a) 55Y(4), (7) or (8)(b);”.
- (14) In the heading, for “Authority's” substitute “FCA's and PRA's”.
- (15) In the italic heading before that section, for “Authority's” substitute “FCA's and PRA's”.

Commencement Information

- 19** Sch. 9 para. 34 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
- 110** Sch. 9 para. 34 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 35 (1) Section 396 (statements under s.395: consultation) is amended as follows.
- (2) In subsection (1)—
- (a) after “a statement of” insert “ its ”,
 - (b) for “the Authority”, in the first place, substitute “ the regulator ”,
 - (c) for “the Authority”, in the second place, substitute “ it ”, and
 - (d) for “it” substitute “ the draft ”.
- (3) In subsection (2), for “Authority” substitute “ regulator publishing the draft ”.
- (4) In subsection (3), for “Before issuing the proposed statement of procedure, the Authority” substitute “ Before a regulator issues the proposed statement of its procedure, it ”.
- (5) In subsection (4), for “Authority issues the proposed statement of procedure” substitute “ regulator issues the proposed statement of its procedure, ”.
- (6) In subsection (5)—
- (a) for “statement of procedure differs from the draft published” substitute “ statement of the regulator's procedure differs from the draft published by it ”,
 - (b) for “, in the opinion of the Authority,” substitute “ , in its opinion, ”, and
 - (c) for “the Authority must” substitute “ it must ”.
- (7) In subsection (6)—
- (a) for “The Authority” substitute “ The regulator publishing a draft under subsection (1) ”, and

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(b) for “a draft published under subsection (1)” substitute “ the draft ”.

Commencement Information

- I11** Sch. 9 para. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
I12 Sch. 9 para. 35 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

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