
STATUTORY INSTRUMENTS

2016 No. 680

The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016

PART 2

Amendments to the Financial Services and Markets Act 2000

Other amendments to the 2000 Act

10.—(1) The 2000 Act is amended as follows.

(2) In section 1D(2)(c)^{M1} (the integrity objective) for “behaviour that amounts to market abuse” substitute “contraventions by persons of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation”.

(3) After section 55J(7ZA)^{M2} (variation or cancellation on initiative of regulator) insert—

“(7ZB) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who is an investment firm, exercise its power under this section if it appears to it that the authorised person has failed to comply with a requirement of the market abuse regulation or of a directly applicable EU regulation made under the market abuse regulation.”.

(4) For section 133(7A)(h)^{M3} (proceedings before Tribunal: general provision) substitute—

“(h) a decision to impose a penalty or publish a statement of censure under section 123, impose a prohibition under section 123A or impose a suspension or restriction under section 123B;”.

(5) In section 137Q (price stabilising rules)—

(a) after subsection (2)(a)^{M4} insert—

“(aa) must not apply to transactions, orders, behaviour, actions or omissions to which the market abuse regulation applies;”;

(b) for subsection (3)^{M5} substitute—

“(3) The FCA may make rules which, for the purposes of the relevant exemption provisions, treat a person who acts or engages in conduct in conformity with specified provisions as acting, or engaging in that conduct, in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.

(3A) “Specified provisions” means such provisions—

- (a) corresponding to the relevant provisions of Article 5 of the market abuse regulation, and
- (b) made by a body or authority outside the EEA as may be specified in rules made by the FCA,

as may be specified in rules made by the FCA.”;

(c) in subsection (4) ^{M6}—

(i) in paragraph (a) for “section 90(9)(b)” substitute “ section 90(9)(d) ”; and

(ii) in paragraph (b) for “section 91(4)(a)” substitute “ section 91(4)(c) ”;

(d) after subsection (4) insert—

“(5) In this section references to Article 5 of the market abuse regulation include any directly applicable EU regulation made under that Article.”

(6) In section 139A(4) ^{M7} (power of the FCA to give guidance), after “short selling regulation” insert “ or the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation ”.

(7) In section 140A(1) ^{M8} (interpretation) in the definition of “regulating provisions” omit paragraph (a)(iv).

(8) In section 168 (appointment of persons to carry out investigations in particular cases)—

(a) in subsection (1)(b) ^{M9} after “section” insert “ 122F, ”;

(b) for subsection (2)(d) substitute—

“(d) a person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.”; and

(c) in subsection (4)(ja)(iv) ^{M10} omit “or”; and

(d) after subsection (4)(ja) insert—

“(jb) a person may have contravened any provision made by or under this Act for the purposes of the market abuse regulation; or”.

(9) After section 169(2) (investigations etc in support of overseas regulator) insert—

“(2A) But where the investigator is—

(a) appointed by the FCA, and

(b) the appointment is in response to a request to the FCA to investigate a possible contravention by a person of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation,

the investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (2) of that section).”.

(10) In section 174 (admissibility of statements made to investigators)—

(a) in subsection (2) ^{M11} after “section 123” insert “ to which this subsection applies ”;

(b) after subsection (3) insert—

“(3A) Subsection (2) applies to proceedings in relation to action to be taken under section 123(2) or (3) against a person who may have contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.”; and

(c) in subsection (4), after “or (5)” insert “ , or a person appointed under section 169 who has the powers conferred by virtue of subsection (2A) of that section ”.

(11) For section 177(7) (offences) substitute—

“(7) In this section—

“court” means—

- (a) the High Court;
 - (b) in Scotland, the Court of Session;
- “investigator appointed by the FCA” means an investigator appointed by the FCA under section 167^{M12}, 168^{M13} or 169^{M14};
- “officer of the FCA” means an officer authorised by the FCA for the purposes of section 165(3).”.

(12) After section 206A(1A)^{M15} (suspending permission to carry on regulated activities etc) insert—

“(1B) The power conferred by subsection (1) may not be exercised in relation to a contravention of a requirement imposed under section 122A, 122B, 122C, 122G, 122H, 122I, 123A or 123B.”.

(13) In section 300(4) (extension of functions of Tribunal) for “market abuse by persons subject to the rules” substitute “ a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation by a person subject to the rules. ”.

(14) In section 381 (injunctions in cases of market abuse)—

- (a) in subsection (1)^{M16}—
 - (i) in paragraph (a) for “engage in market abuse” substitute “ contravene Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation ”;
 - (ii) in paragraph (b)—
 - (aa) for “engaged in market abuse” substitute “ contravened Article 14 or 15 of the market abuse regulation ”; and
 - (bb) for “market abuse” substitute “ contravention ”; and
 - (iii) in the closing words for “market abuse” substitute “ contravention ”;
- (b) in subsection (2)^{M17}—
 - (i) in paragraph (a) for “engaged in market abuse” substitute “ contravened Article 14 or 15 of the market abuse regulation ”; and
 - (ii) in paragraph (b) for “market abuse” substitute “ contravention ”;
- (c) in subsection (3)^{M18}—
 - (i) in paragraph (a) for “engaged in market abuse” substitute “ contravening Article 14 or 15 of the market abuse regulation ”; and
 - (ii) in paragraph (b) for “been engaged in market abuse” substitute “ contravened Article 14 or 15 of the market abuse regulation ”; and
- (d) in subsection (6) for “market abuse” substitute “ contravention ”.

(15) In section 383 (restitution orders in cases of market abuse)—

- (a) for subsection (1)^{M19} substitute—

“(1) The court may, on the application of the FCA, make an order under subsection (4) if it is satisfied that—

 - (a) a person (“the person concerned”) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation^{M20}; and
 - (b) the condition mentioned in subsection (2) is fulfilled.”; and

- (b) omit subsection (3).
- (16) in section 384 (power of FCA or PRA to require restitution)—
 - (a) for subsection (2) ^{M21} substitute—
 - “(2) The FCA may exercise the power in subsection (5) ^{M22} if it is satisfied that—
 - (a) a person (“the person concerned”) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; and
 - (b) the condition mentioned in subsection (3) is fulfilled.”;
 - (b) in subsection (3) for “market abuse” (in each place) substitute “contravention of Article 14 or 15 of the market abuse regulation”;
 - (c) omit subsection (4) ^{M23}.
- (17) In section 391 (publication)—
 - (a) in subsection (7B) ^{M24} omit paragraphs (a) and (b);
 - (b) after subsection (8A) ^{M25} insert—
 - “(8B) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation, this section has effect subject to Article 34 of the market abuse regulation (publication of decisions).”.
- (18) In section 395(13) (the FCA's and PRA's procedures)—
 - (a) omit paragraph (ba) ^{M26}; and
 - (b) after paragraph (bb) ^{M27} insert—
 - “(bbza) 122I;”.
- (19) In section 398(1A) (misleading FCA or PRA: residual cases)—
 - (a) omit “or” following paragraph (e) ^{M28}; and
 - (b) in paragraph (f) ^{M29} omit the full stop after “Funds”; and insert—
 - “; or
 - (g) the market abuse regulation.”.
- (20) Omit section 415B(3)(c) ^{M30} (consultation in relation to taking certain enforcement action).
- (21) In section 417(1) (definitions)—
 - (a) omit the definition of “market abuse”;
 - (b) in the appropriate place insert—
 - ““market abuse regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC;”.
- (22) Omit paragraph 8(3)(b) of Schedule 1ZA ^{M31} (arrangements for discharging functions).

Marginal Citations

M1 Section 1D(2)(c) was inserted by section 6(1) of the Financial Services Act 2012.

M2 Section 55J(7) was inserted by section 11(2) of the Financial Services Act 2012.

- M3** Section 133(7A)(h) was inserted by section 23(2)(c) of the Financial Services Act 2012.
- M4** Section 137Q(2)(a) was inserted by section 24(1) of the Financial Services Act 2012.
- M5** Section 137Q(3) was inserted by section 24(1) of the Financial Services Act 2012.
- M6** Section 137Q(4) was inserted by section 24(1) of the Financial Services Act 2012.
- M7** Section 139A(4) was inserted by section 24(1) of the Financial Services Act 2012.
- M8** Section 140A(1) was inserted by section 24(1) of the Financial Services Act 2012 and the definition of “regulating provisions” was further amended by paragraph 10(a) and (b) of Schedule 3 to the [Pensions Act 2013 \(c.8\)](#); there are other amending instruments but none is relevant.
- M9** Section 168(1)(b) was amended by paragraph 8(2)(b) of Schedule 12 to the Financial Services Act 2012.
- M10** Section 168(4)(ja) was amended by [S.I. 2013/1773](#).
- M11** Section 174(2) was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012.
- M12** Section 167 was amended by [S.I. 2007/126](#), [paragraph 7\(2\)](#) and (3) of Schedule 12 to the Financial Services Act 2012, and by [S.I. 2015/575](#).
- M13** Section 168 was amended by [S.I. 2007/126](#), [paragraph 33\(3\)](#) of Schedule 7 to the Counter-Terrorism Act 2008 (c.28), [paragraph 16\(2\)](#) and (3) of Schedule 2 to the Financial Services Act 2010, paragraph 8(2)(a) to (c), (3)(a) and (b), (4)(a) to (g), (5), and (6) of Schedule 12 to the Financial Services Act 2012, [S.I. 2012/2554](#) and 2013/1773, paragraph 11 of Schedule 3 to the [Pension Schemes Act 2015 \(c.8\)](#), and 2016/225.
- M14** Section 169 was amended by [S.I. 2011/1043](#) and by paragraph 9(2) to (9) of Schedule 12 to the Financial Services Act 2012.
- M15** Section 206A was inserted by section 9 of the Financial Services Act 2010 and subsection (1A) was inserted by paragraph 13(3) of Schedule 9 to the Financial Services Act 2012.
- M16** Section 381(1) was amended by paragraph 20(2) of Schedule 9 to the Financial Services Act 2012.
- M17** Section 381(2) was amended by paragraph 20(2) of Schedule 9 to the Financial Services Act 2012.
- M18** Section 381(3) was amended by paragraph 20(2) of Schedule 9 to the Financial Services Act 2012.
- M19** Section 383(1) was amended by paragraph 22 of Schedule 9 to the Financial Services Act 2012.
- M20** OJ No L 173, 14.04.2014, p31.
- M21** Section 384(2) was amended by paragraph 23(2)(a) of Schedule 9 to the Financial Services Act 2012.
- M22** Section 384(5) was amended by paragraph 23(4)(a) and (b) of Schedule 9 to the Financial Services Act 2012.
- M23** Section 384(4) was amended by paragraph 23(3) of Schedule 9 to the Financial Services Act 2012.
- M24** Section 391(7B) was inserted by [S.I. 2012/916](#).
- M25** Section 391(8A) was inserted by [S.I. 2014/2879](#).
- M26** Section 395(13)(ba) was inserted by [S.I. 2005/381](#).
- M27** Section 395(13)(bb) was inserted by [S.I. 2005/1433](#).
- M28** Section 398(1A)(e) was inserted by [S.I. 2013/1773](#).
- M29** Section 398(1A)(f) was inserted by [S.I. 2015/1882](#).
- M30** Section 415B(3)(c) was inserted by paragraph 41 of Schedule 9 to the Financial Services Act 2012.
- M31** Paragraph 8(3)(b) of Schedule 1ZA was inserted by paragraph 1 of Schedule 3 to the Financial Services Act 2012 and amended by paragraph 16(a) of Schedule 3 to the [Financial Services \(Banking Reform\) Act 2013 \(c.33\)](#).

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016, Section 10.