

**Status:** Point in time view as at 02/01/2018.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 2 is up to date with all changes known to be in force on or before 19 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULE 1

### Administration and enforcement of Parts 3, 4, and 5

## PART 2

### The FCA and the PRA

#### *Functions of the FCA and the PRA*

#### **Functions of the FCA**

3.—(1) The FCA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, and in giving general guidance under these Regulations, the FCA must, so far as is reasonably possible, act in a way which—

- (a) is compatible with its strategic objective as defined in section 1B(2) of the Act <sup>M1</sup> (the FCA's general duties); and
- (b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.

#### **Marginal Citations**

**M1** Sections 1B and 1F were inserted by section 6 of the Financial Services Act 2012.

#### **Functions of the PRA**

4.—(1) The PRA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, the PRA must, so far as is reasonably possible, act in a way which is compatible with its general objective as defined in section 2B(2) of the Act <sup>M2</sup> (the PRA's general duties).

(3) Section 2H(1) of the Act <sup>M3</sup> (secondary competition objective) applies to the exercise by the PRA of its functions under these Regulations.

#### **Marginal Citations**

**M2** Section 2B was inserted by section 6 of the Financial Services Act 2012 and amended by section 1 of the Financial Services (Banking Reform) Act 2013 (c.33).

**M3** Section 2H was substituted by section 130 of the Financial Services (Banking Reform) Act 2013.

#### *Supervision*

#### **Monitoring and enforcement**

5.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 3, 4 or 5 of these Regulations or

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non-authorised counterparties on whom requirements are imposed by Article 28 of the markets in financial instruments regulation are complying with them.

(2) The PRA must maintain arrangements designed to enable it to determine whether PRA-authorised persons on whom requirements are imposed by or under Part 5 of these Regulations are complying with them.

(3) The FCA must maintain arrangements for enforcing the provisions of—

- (a) Parts 3, 4 and 5 of these Regulations, and
- (b) Article 28 of the markets in financial instruments regulation as respects non-authorised counterparties.

(4) The PRA must maintain arrangements for enforcing the provisions of Part 5 of these Regulations as respects PRA-authorised persons.

### Co-operation

6.—(1) In exercising its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation, the FCA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the FCA under these Regulations;
- (b) persons who have functions similar to the functions of the FCA with respect to Article 28 of the markets in financial instruments regulation; and
- (c) other persons mentioned in Article 79 of the markets in financial instruments directive.

(2) In exercising its functions under Part 5 of these Regulations, the PRA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the PRA under these Regulations; and
- (b) other persons mentioned in Article 79 of the markets in financial instruments directive.

(3) The duty under section 3D of the Act <sup>M4</sup> (duty of FCA and PRA to ensure co-ordinated exercise of functions) applies to the exercise of the functions of the FCA and PRA under these Regulations, and in the case of the FCA its functions with respect to Article 28 of the markets in financial instruments regulation, as it applies to the exercise of their functions under the Act.

#### Marginal Citations

**M4** [Section 3D](#) was inserted by section 6 of the Financial Services Act 2012.

### Guidance

7.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of Parts 3, 4, and 5 of these Regulations;
- (b) any matters relating to the functions of the FCA under these Regulations or with respect to Article 28 of the markets in financial instruments regulation; or
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.

(2) The FCA may—

- (a) publish its guidance;

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- (b) offer copies of its published guidance for sale at a reasonable price; and
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(3) Section 139B of the Act<sup>M5</sup> (notification of FCA guidance to the Treasury) applies with respect to guidance given by the FCA under this paragraph as it applies with respect to guidance given by the FCA under section 139A of the Act (power of the FCA to give guidance) as if—

- (a) for subsection (5) there were substituted—

“(5) “General guidance” means guidance given by the FCA under paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 which is—

- (a) given to persons generally, to persons to whom those Regulations apply generally or to a class of persons to whom those Regulations apply,
- (b) intended to have continuing effect, and
- (c) given in writing or other legible form.”;

- (b) subsection (6) were omitted.

#### Marginal Citations

**M5** Sections 139A and 139B were inserted by section 24 of the Financial Services Act 2012. There are amendments to section 139A but none is relevant.

#### Reporting requirements

**8.—(1)** A person (“P”) must provide the appropriate regulator with such information in respect of P's compliance or non-compliance with any requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to P as the appropriate regulator may direct.

(2) The information required to be given under this paragraph must be provided at such times, in such form, and verified in such manner, as the appropriate regulator may direct.

(3) If at any time P considers that it is unable to comply with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to it, P must as soon as reasonably practicable notify the appropriate regulator of that fact, including the reasons why it is unable to comply.

- (4) In this paragraph, “appropriate regulator” means—

- (a) in relation to a requirement imposed by the PRA on a PRA-authorized person under Part 5 of these Regulations, the PRA, and
- (b) in any other case, the FCA.

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