

## SCHEDULE 1

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

## PART 3

### Administrative sanctions and offences

#### *Administrative sanctions*

#### **Interpretation of Part 3**

- 9.**—(1) In this Part, “regulator” means the FCA or the PRA.
- (2) In paragraphs 10 and 11, “appropriate regulator” means—
- (a) in relation to a contravention of a requirement imposed by the PRA on a PRA-authorised person under Part 5 of these Regulations, the PRA; and
  - (b) in relation to any other contravention of these Regulations or of Article 28 of the markets in financial instruments regulation, the FCA.

#### **Public censure**

- 10.** If the appropriate regulator considers that—
- (a) a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation,
  - (b) a member of the management body of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation, or
  - (c) another member of the senior management of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation,
- the appropriate regulator may publish a statement to that effect.

#### **Financial penalties**

- 11.**—(1) If the appropriate regulator considers that a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation, it may impose a penalty of such amount as it considers appropriate on—
- (a) P;
  - (b) a member of the management body of P if the appropriate regulator considers the person is responsible for the contravention;
  - (c) another member of the senior management of P if the appropriate regulator considers the person is responsible for the contravention.
- (2) A penalty imposed under this paragraph is payable to the regulator that imposed the penalty and may be recovered as a debt owed to that regulator.

#### **Warning notice**

- 12.**—(1) If a regulator proposes to—
- (a) publish a statement in respect of a person under paragraph 10; or

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- (b) impose a penalty on a person under paragraph 11,  
it must give the person a warning notice.
- (2) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

### **Decision notice**

**13.**—(1) If, having considered any representations made in response to the warning notice, a regulator decides to—

- (a) publish a statement under paragraph 10 (whether or not in the terms proposed); or
- (b) impose a penalty under paragraph 11 (whether or not of the amount proposed),

it must without delay give the person concerned a decision notice.

- (2) In the case of a statement, the decision notice must set out the terms of the statement.
- (3) In the case of a penalty, the decision notice must state the amount of the penalty.
- (4) If a regulator decides to—

- (a) publish a statement in respect of a person under paragraph 10; or
- (b) impose a penalty on a person under paragraph 11,

the person may refer the matter to the Tribunal.

(5) After a statement under paragraph 10 is published, the regulator concerned must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the Act <sup>M1</sup> (third party rights) (as applied by paragraph 22).

### **Marginal Citations**

**M1** Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

### **Statements of policy**

- 14.**—(1) Each regulator must prepare and issue a statement of policy with respect to—
  - (a) the imposition of penalties under paragraph 11; and
  - (b) the amount of penalties under that paragraph.
- (2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the person against whom action is to be taken is an individual.
- (3) A regulator may at any time alter or replace a statement issued by it under this paragraph.
- (4) If a statement issued under this paragraph is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.
- (5) A regulator must, without delay, give the Treasury a copy of any statement which it issues under this paragraph.

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(6) A statement issued under this paragraph by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) The regulator may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under paragraph 11 in the case of any particular contravention, a regulator must have regard to any statement of policy published by it under this paragraph and in force at the time when the contravention in question occurred.

### **Statements of policy: procedure**

**15.**—(1) Before a regulator issues a statement under paragraph 14, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that representations about the proposal may be made to the regulator within a specified time.

(3) Before issuing the proposed statement the regulator must have regard to any representations made to it in accordance with sub-paragraph (2).

(4) If the regulator issues the proposed statement it must publish an account, in general terms, of—

- (a) the representations made to in accordance with sub-paragraph (2); and
- (b) its response to them.

(5) If the statement differs from the draft published under sub-paragraph (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with sub-paragraph (4)) publish details of the difference.

(6) A regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under sub-paragraph (1).

(7) This paragraph also applies to a proposal to alter or replace a statement.

### *Offences*

#### **Misleading the FCA or PRA**

**16.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation knowingly or recklessly give a regulator information which is false or misleading in a material particular.

(2) A person must not provide information to another person—

- (a) knowingly; or
- (b) being reckless as to whether,

the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purposes of providing information to, a regulator in connection with the discharge of its functions under these Regulations or with respect to Article 28 of the markets in financial instruments regulation.

(3) A person who contravenes sub-paragraph (1) or (2) is guilty of an offence.

(4) A person guilty of an offence under this paragraph is liable—

- (a) on summary conviction—
  - (i) in England and Wales, to a fine;

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- (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

### **Restriction on penalties**

**17.—(1)** A person who is convicted of an offence under these Regulations or under the Act as applied by these Regulations is not subsequently liable to a penalty under paragraph 11 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under paragraph 11 is not subsequently liable for an offence under these Regulations in respect of the same acts or omissions that constituted the contravention of a requirement imposed by or under these Regulations for the purposes of that penalty.

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