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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

The Small and Medium Sized Business  
(Finance Platforms) Regulations 2015

PART 5

Monitoring of compliance and enforcement

CHAPTER 1

The FCA

**Functions of the FCA**

15.—(1) The FCA has the functions conferred on it by this Part.

(2) In discharging its functions under this Part (including its functions under any provision of the 2000 Act as applied by this Part), the FCA must have regard to the need to use its resources in the most efficient and economic way.

**Monitoring and enforcement**

16.—(1) The FCA must maintain arrangements designed to enable it to determine whether—

- (a) designated banks and designated finance platforms are complying with any relevant requirements applicable to them;
- (b) there has been a contravention of regulation 31 (misleading the FCA).

(2) The FCA must also maintain arrangements designed to enable it to enforce relevant requirements.

**Guidance and consultation**

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

- (a) the operation of these Regulations;
- (b) any matters relating to the functions of the FCA under this Part;
- (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;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(3) The requirements of section 138I of the 2000 Act (consultation by the FCA)(1), in so far as they apply to a proposal to make rules or give guidance under or in relation to these Regulations, may be satisfied by things done (wholly or in part) before the date on which these Regulations come into force.

### **Fees and penalties**

**18.**—(1) Subject to paragraphs (2) to (4), the functions of the FCA under this Part are to be treated for the purposes of paragraph 23 (fees) of Schedule 1ZA to the 2000 Act(2) as functions conferred on the FCA under that Act.

(2) Paragraph 23 of that Schedule, as it applies by virtue of paragraph (1) above, has effect as if a reference to the 2000 Act in sub-paragraphs (7) and (8) included a reference to these Regulations.

(3) Subsection (5)(a) of section 1B of the 2000 Act (the FCA’s general duties)(3) does not apply to the making of rules under paragraph 23 of that Schedule by virtue of this regulation.

(4) Rules made under paragraph 23 of that Schedule by virtue of this regulation are not to be treated as regulating provisions for the purposes of Chapter 4 of Part 9A (competition scrutiny)(4) of the 2000 Act.

(5) The FCA must apply amounts paid to it by way of penalties imposed under regulation 26 towards expenses incurred in carrying out its functions under this Part or for any incidental purpose.

### **Exemption from liability in damages**

**19.** The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 25 of Schedule 1ZA to the 2000 Act (exemption from liability in damages)(5) as functions conferred on the FCA under that Act.

## **CHAPTER 2**

### **Reporting and information**

#### **Reporting requirements**

**20.**—(1) A designated firm must provide the FCA with such information in respect of its compliance or non-compliance with any relevant requirement applicable to it as the FCA may direct.

(2) A designated firm must provide the FCA with information required to be given under this regulation at such times, in such form, and verified in such manner, as the FCA may direct.

#### **Record keeping**

**21.**—(1) A designated firm must maintain relevant records in retrievable and legible form for no less than five years from the date on which the records were created.

(2) For the purposes of this regulation, records are relevant where they contain information relevant to demonstrating the designated firm’s compliance or non-compliance with any relevant requirement applicable to the designated firm.

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(1) Section 138I has been amended, but none of the amendments are relevant here.  
(2) Schedule 1ZA was inserted by section 6(2) of the Financial Services Act 2012, paragraph 23 has been amended, but none of the amendments are relevant here.  
(3) Section 1B has been amended, but the amendment is not relevant here.  
(4) Chapter 4 of Part 9A has been amended, but none of the amendments are relevant here.  
(5) Paragraph 25 has been amended, but the amendment is not relevant here.

## Restrictions on disclosure of information

**22.**—(1) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc), 349 (exceptions from section 348) and 352 (offences) of the 2000 Act<sup>(6)</sup> apply for the purposes of this Part as if—

(a) in section 348—

(i) in subsection (2)(b) for the words “, the PRA” to the end there were substituted “under the Small and Medium Sized Business (Finance Platforms) Regulations 2015”;

(ii) in subsection (3)(a) for “this Act” there were substituted “the Small and Medium Sized Business (Finance Platforms) Regulations 2015”;

(iii) in subsection (5)—

(aa) paragraphs (aa) and (c) were omitted;

(bb) in paragraph (d) after “section 166” there were inserted “as applied by the Small and Medium Sized Business (Finance Platforms) Regulations 2015”;

(cc) in paragraph (e) for “ a person mentioned in paragraphs (a) to (c)” there were substituted “the FCA”;

(dd) in paragraphs (ea) and (f) for “a person mentioned in those paragraphs” there were substituted “the FCA”;

(iv) for subsection (6) there were substituted—

“(6) In subsection (5)(f) “expert” includes a competent person appointed by the FCA to conduct an investigation under Part 11 as applied by the Small and Medium Sized Business (Finance Platforms) Regulations 2015.”;

(b) in section 349, subsections (3A) and (3B) were omitted;

(c) in section 352—

(i) in subsection (1) “or 350(5)” were omitted;

(ii) subsection (4) were omitted;

(iii) in subsection (5) “or (4)” were omitted;

(iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

(2) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001<sup>(7)</sup> apply for the purposes of this Part as if Part 3 were omitted.

## CHAPTER 3

### Investigatory powers

## Information gathering and investigations under Part 11 of the 2000 Act

**23.** Part 11 (information gathering and investigations) of the 2000 Act<sup>(8)</sup> applies for the purposes of this Part as if—

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<sup>(6)</sup> Section 348 is amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33). Section 349 is amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, S.I. 2007/1093 and S.I. 2011/1043. Section 352 is amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

<sup>(7)</sup> S.I. 2001/2188.

<sup>(8)</sup> Part 11 is amended by paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012,

- (a) each reference in that Part to the 2000 Act were a reference to this Part;
- (b) each reference in that Part to an authorised person were a reference to a designated firm;
- (c) each reference in that Part to the PRA were omitted;
- (d) each reference in that Part to either regulator were a reference to the FCA only;
- (e) in section 165(7) (regulators’ power to require information: authorised persons etc.), paragraphs (b) to (e) were omitted;
- (f) sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) were omitted;
- (g) in section 166 (reports by skilled persons), subsections (10) and (11) were omitted;
- (h) in section 166A (appointment of skilled person to collect and update information)—
  - (i) in subsection (1) for “rules made by that regulator to collect, and keep up to date, information of a description specified in the rules” there were substituted “regulation 21 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 to maintain relevant records as specified in those Regulations”;
  - (ii) each reference in that section to “information” were a reference to “relevant records”;
  - (iii) subsection (10) were omitted;
- (i) in section 167 (appointment of persons to carry out general investigations)—
  - (i) in subsection (1)—
    - (aa) for “an investigating authority” and “the investigating authority” there were substituted “the FCA”;
    - (bb) in paragraphs (a) and (c) of subsection (1) the words “a recognised investment exchange or” were omitted;
    - (cc) in paragraph (a) of subsection (1) the words “or of an appointed representative” were omitted;
  - (ii) in subsection (4) the words “(or appointed representative)” were omitted in each place;
  - (iii) subsections (2)(c), (3A), (5A) and (6) were omitted;
- (j) in section 168 (appointment of persons to carry out investigations in particular cases)—
  - (i) in subsection (1)—
    - (aa) for “an investigating authority” there were substituted “the FCA”;
    - (bb) for paragraph (b) there were substituted—
      - “(b) a designated firm may have contravened a requirement imposed by or under the Small and Medium Sized Business (Finance Platforms) Regulations 2015, or a person may be guilty of an offence under regulation 31 of those Regulations (misleading the FCA).”;
  - (ii) in subsection (3) for “investigating authority” there were substituted “FCA”; and
  - (iii) subsections (2), (4), (5) and (6) were omitted;
- (k) sections 169 (investigations etc. in support of overseas regulator) and 169A (support of overseas regulator with respect to financial stability) were omitted;

- (l) in section 170 (investigations: general)—
  - (i) in subsection (1) “or (5)” were omitted;
  - (ii) in subsection (3)(a) “or (4)” were omitted;
  - (iii) subsection (3)(b) and the preceding “; or” were omitted; and
  - (iv) for subsection (10) the following were substituted—
    - “(10) “Investigating authority” in this Part is to be read as a reference to the FCA.”;
- (m) in section 171 (powers of persons appointed under section 167), subsections (3A) and (7) were omitted;
- (n) in section 172 (additional power of persons appointed as a result of section 168(1) or (4)), in the heading and in subsection (4), “or (4)” were omitted;
- (o) section 173 (powers of persons appointed as a result of section 168(2)) were omitted;
- (p) in section 174 (admissibility of statements made to investigators)—
  - (i) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123” were omitted;
  - (ii) in subsection (3)(a) for “398” there were substituted “regulation 31 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (misleading the FCA)”;
  - (iii) in subsection (4), “or (5)” were omitted;
  - (iv) in subsection (5) “, 173” were omitted;
- (q) in section 175(8) (information and documents: supplemental provisions) “or (5)” were omitted;
- (r) in section 176 (entry of premises under warrant)—
  - (i) in subsection (1) “the Secretary of State,” were omitted and “first or second” were substituted for “first, second or third”;
  - (ii) in subsection (3)(a) “or an appointed representative” were omitted;
  - (iii) subsection (4) were omitted;
  - (iv) in subsection (10) “or (5)” were omitted;
  - (v) in subsection (11)—
    - (aa) in paragraph (a) “87C, 87J,” and “,165A, 169A” were omitted; and
    - (bb) in paragraph (b) “, 173” were omitted.

### **Protected information**

**24.** Section 413 of the 2000 Act (protected items) applies for the purposes of this Part as it applies for the purposes of that Act.

## **CHAPTER 4**

### **Disciplinary measures**

### **Public censure**

**25.** If the FCA considers that a designated firm has contravened a relevant requirement, the FCA may publish a statement to that effect.

### **Financial penalties**

- 26.**—(1) The FCA may impose a penalty of such amount as it considers appropriate on—
- (a) a designated firm which it considers has contravened a relevant requirement; or
  - (b) a person who it considers has contravened regulation 31 (misleading the FCA).
- (2) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

### **Limitations on permission to carry on regulated activities**

**27.**—(1) If the FCA considers that a designated firm has contravened a relevant requirement, it may impose, for such period as it considers appropriate, such limitations in relation to the carrying on of a regulated activity by the designated firm as it considers appropriate.

(2) In paragraph (1) above “carrying on of a regulated activity” means carrying on of a regulated activity under any permission given (or treated as given) by the FCA or PRA or conferred by any provision of the 2000 Act.

(3) The period for which a limitation is to have effect may not exceed 12 months.

(4) A limitation may, in particular, be imposed so as to require the designated firm to take, or refrain from taking, specified action.

(5) The FCA may—

- (a) withdraw a limitation, or
- (b) vary a limitation so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the regulated activities that the designated firm carries on.

(7) Any one or more of the powers under this regulation and regulations 25 (public censure) and 26 (financial penalties) may be exercised in relation to the same contravention.

## **CHAPTER 5**

### **Injunctions and restitution**

#### **Injunctions**

- 28.**—(1) If, on the application of the FCA, the court is satisfied—
- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
  - (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,
- the court may make an order restraining (or, in Scotland, an interdict prohibiting) the contravention.
- (2) If, on the application of the FCA, the court is satisfied—
- (a) that any person has contravened a relevant requirement; and
  - (b) that there are steps which could be taken for remedying the contravention,
- the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.
- (3) If, on the application of the FCA, the court is satisfied that any person may have—
- (a) contravened a relevant requirement imposed; or
  - (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or, in Scotland, an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied that they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

### **Power of FCA to require restitution**

**29.**—(1) The FCA may exercise the power in paragraph (2) if it is satisfied that a designated firm (referred to in this regulation as “the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the person concerned as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require the person concerned, in accordance with such arrangements as the FCA considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the FCA to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both of those sub-paragraphs, to the profits appearing to the FCA to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) “appropriate person” means a person appearing to the FCA to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

### **Restitution orders**

**30.**—(1) The court may, on the application of the FCA, make an order under paragraph (2) if it is satisfied that a designated firm has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the designated firm as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the designated firm to pay to the FCA such sum as appears to the court to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the court to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both those sub-paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the FCA in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In paragraph (3), “qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

(5) On an application under paragraph (1) the court may require the designated firm to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and
- (c) determining how any amounts are to be paid or distributed under paragraph (3).

(6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.

(7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(8) Nothing in this regulation affects the right of any person other than the FCA to bring proceedings in respect of the matters to which this regulation applies.

## CHAPTER 6

### Misleading the FCA

#### **Offence of misleading the FCA**

**31.**—(1) A person must not, for the purposes of compliance or purported compliance with a relevant requirement, knowingly or recklessly give the FCA information which is false or misleading in a material particular.

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

- (a) knowing, 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, the FCA in connection with the discharge of its functions under this Part.

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

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

- (a) on summary conviction, to a fine, or
- (b) on conviction on indictment, to a fine.

#### **Restriction on penalties**

**32.** A person who is convicted of an offence under regulation 31 (misleading the FCA) is not subsequently liable to a penalty under regulation 26 (financial penalties) in respect of the same acts or omissions that constituted the offence.



### **Liability of officers of bodies corporate etc**

**33.**—(1) If an offence under regulation 31 committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect of such officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under regulation 31 committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect of such partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under regulation 31 committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect of such officer,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in that capacity; and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

### **Proceedings for offence**

**34.**—(1) Proceedings for an offence under regulation 31 (misleading the FCA) may be instituted—

- (a) in England and Wales only by the FCA or by or with the consent of the Director of Public Prosecutions, or
- (b) in Northern Ireland only by the FCA or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) In exercising its power to institute proceedings for an offence under regulation 31, the FCA must comply with any conditions or restrictions imposed in writing by the Treasury in relation to such proceedings.

(3) Conditions or restrictions may be imposed under paragraph (2) in relation to—

- (a) proceedings generally; or
- (b) such proceedings, or categories of proceedings, as the Treasury may direct.

### Further provisions relating to proceedings for offence

**35.**—(1) Proceedings for an offence under regulation 31 (misleading the FCA) alleged to have been committed by a partnership or other unincorporated association must be brought in the name of the partnership or association (and not in those of its members).

(2) A fine imposed on a partnership or unincorporated association on its conviction of an offence under regulation 31 is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if a partnership or unincorporated association were a body corporate.

(4) In proceedings for an offence under regulation 31 brought against a partnership or unincorporated association—

- (a) section 33 (procedure on charge of offence against corporation) of the Criminal Justice Act 1925<sup>(9)</sup> and Schedule 3 to the Magistrates' Courts Act 1980<sup>(10)</sup> apply as they do in relation to a body corporate;
- (b) sections 70 and 143 (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995<sup>(11)</sup> apply;
- (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945<sup>(12)</sup> and Schedule 4 (corporations) to the Magistrates' Courts (Northern Ireland) Order 1981<sup>(13)</sup> apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under regulation 31 may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where that individual is for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

## CHAPTER 7

### Procedure

#### Requirement to issue warning notice

**36.**—(1) Where the FCA proposes to—

- (a) publish a statement under regulation 25 (public censure),
- (b) impose a penalty under regulation 26 (financial penalties),
- (c) impose a limitation on a permission under regulation 27 (limitations on permission to carry on regulated activities), or
- (d) exercise the power in regulation 29(2) (power of FCA to require restitution),

it must give the person concerned a warning notice.

(2) The warning notice must set out the following—

- (a) in the case of a statement under regulation 25, the terms of the proposed statement;

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<sup>(9)</sup> 1925 c.86. Section 33 is amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, the Courts Act 1971 (c.23), Schedule 8, and the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

<sup>(10)</sup> 1980 c.43. Schedule 3 is amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4.

<sup>(11)</sup> 1995 c.46. Section 70 is amended by section 66 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13. Section 143 is amended by section 67 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13, section 17 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 asp 6 and S.S.I. 2001/128.

<sup>(12)</sup> 1945 c.15.

<sup>(13)</sup> S.I. 1981/1675.

- (b) in the case of a penalty under regulation 26, the amount of the proposed penalty;
- (c) in the case of a limitation on a permission under regulation 27, the limitation and the period for which it is to have effect;
- (d) in the case of the exercise of the power in regulation 29(2), the amount which the FCA proposes to require to be paid or distributed as mentioned in regulation 29(2).

### **Requirement to issue decision notice**

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

- (a) publish a statement under regulation 25 (public censure);
- (b) impose a penalty under regulation 26 (financial penalties);
- (c) impose a limitation on a permission under regulation 27 (limitations on permission to carry on regulated activities); or
- (d) exercise the power in regulation 29(2) (power of FCA to require restitution),

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

(2) The decision notice must set out the following—

- (a) in the case of a statement under regulation 25, the terms of the statement;
- (b) in the case of a penalty under regulation 26, the amount of the penalty;
- (c) in the case of a limitation on a permission under regulation 27, the limitation and the period for which it is to have effect;
- (d) in the case of the exercise of the power in regulation 29(2)—
  - (i) the amount to be paid or distributed;
  - (ii) the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
  - (iii) the arrangements in accordance with which the payment or distribution is to be made.

### **Third party rights**

**38.** After a statement under regulation 25 (public censure) is published, the FCA 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) (third party rights) of the 2000 Act<sup>(14)</sup> (as applied by regulation 41 (application of Part 26 of the 2000 Act)).

### **Service of notices**

**39.**—(1) Section 414 of the 2000 Act (service of notices) applies for the purposes of this Part as if in subsection (1) and (4) for “this Act” there were substituted “the Small and Medium Sized Business (Finance Platforms) Regulations 2015”.

(2) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001<sup>(15)</sup> apply to any notice, direction or document of any kind given by or to the FCA under this Part as they apply to any notice, direction or document of any kind under the 2000 Act.

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<sup>(14)</sup> Section 393(4) is amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

<sup>(15)</sup> S.I. 2001/1420. This has been amended by S.I. 2005/274, S.I. 2010/1193, S.I. 2013/472, and S.I. 2014/549.

### Statements of policy

**40.**—(1) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act(**16**) apply to the FCA with respect to—

- (a) the imposition of penalties or restrictions under regulations 26 (financial penalties) and 27 (limitations on permission to carry on regulated activities);
- (b) the amount of penalties imposed under regulation 26(**1**); and
- (c) the period for which restrictions imposed under regulation 27 are to have effect,

as they apply with respect to action the FCA may take under sections 206 (financial penalties) and 206A (suspending permission to carry on regulated activities) of the 2000 Act(**17**).

But see paragraph (2).

- (2) Section 210 of the 2000 Act applies as if subsection (1A) were omitted.

### Application of Part 26 of the 2000 Act

**41.** Part 26 (notices) of the 2000 Act(**18**) applies for the purposes of this Part as if—

- (a) references to the PRA in that Part were omitted;
- (b) each reference in that Part to either regulator were a reference to the FCA only;
- (c) in section 387 (warning notices), subsections (1A) and (3A) were omitted;
- (d) in section 388 (decision notices), subsections (1A) and (2) were omitted;
- (e) in section 390 (final notices), in subsection (6) for “section 384(5)” there were substituted “regulation 29 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015”;
- (f) in section 391 (publication)—
  - (i) in subsection (1) for “falling within subsection (1ZB)” there were substituted “given under regulation 36 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015”;
  - (ii) subsections (1ZA), (1ZB), (4A), (5), (5A), (6A), (7A), (7B), (8A), (8), (10) and (11) were omitted;
- (g) section 391A were omitted;
- (h) for section 392(a) and (b) (application of sections 393 and 394) there were substituted—
  - “(a) a warning notice given in accordance with regulation 36 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015;
  - (b) a decision notice given in accordance with regulation 37 of those Regulations.”
- (i) in section 395 (the FCA’s and PRA’s procedures)—
  - (i) for subsections (1) and (2) there were substituted—
    - “(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give a warning notice or decision notice.

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(16) Section 210 is amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012. Section 211 is amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.

(17) Part 14 is amended by sections 9 and 10 of and Schedule 2 to the Financial Services Act 2010, Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1773](#).

(18) Part 26 is amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 ([c.23](#)), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, [S.I. 2005/381](#), [S.I. 2005/1433](#), [S.I. 2007/126](#), [S.I. 2007/1973](#), [S.I. 2009/534](#), [S.I. 2010/22](#), [S.I. 2012/916](#), [S.I. 2013/1388](#), [S.I. 2013/3115](#) and [S.I. 2014/2879](#).

- (2) That procedure must be designed to secure, among other things, that a decision falling within subsection (1) is taken—
  - (a) by a person not directly involved in establishing the evidence on which the decision is based, or
  - (b) by two or more persons who include a person not directly involved in establishing that evidence.”;
- (ii) subsections (3), (4), (9A) and (13) were omitted, and
- (iii) in subsection (9), there were omitted “supervisory notice, or a” and “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)”.

## CHAPTER 8

### Referral to the Tribunal

#### Referral to Tribunal

**42.** If the FCA decides to—

- (a) publish a statement under regulation 25 (public censure);
- (b) impose a penalty under regulation 26 (financial penalties);
- (c) impose a limitation on a permission under regulation 27 (limitations on permission to carry on regulated activities); or
- (d) exercise the power in regulation 29(2) (Power of FCA to require restitution) ,

the person concerned may refer the matter to the Upper Tribunal.

#### The Tribunal

**43.—**(1) Part 9 (hearings and appeals) of the 2000 Act<sup>(19)</sup> applies with respect to proceedings pursuant to references to the Upper Tribunal under regulation 42 (“relevant proceedings”) as it applies to proceedings pursuant to references to the Upper Tribunal under that Act, with the following modifications.

(2) Section 133 (proceedings before the Tribunal: general provision) applies as if—

- (a) in subsection (1)—
  - (i) there were omitted “(whether made under this or any other Act)”;
  - (ii) in paragraph (a) “or the PRA” were omitted;
  - (iii) paragraphs (b) and (c) were omitted;
- (b) in subsection (2) “, (b) or (c)” were omitted;
- (c) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of any of the following decisions—

  - (a) a decision to publish a statement under regulation 25 (public censure) of the Small and Medium Sized Business (Finance Platforms) Regulations 2015;
  - (b) a decision to impose a penalty under regulation 26 of those Regulations (financial penalties);

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<sup>(19)</sup> Part 9 is amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22 and S.I. 2013/1388.

- (c) a decision to impose a limitation on a permission under regulation 27 of those Regulations (limitations on permission to carry on regulated activities).”
- (3) Section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if—
  - (a) the words “(whether under this or any other Act)” were omitted in each place;
  - (b) in subsection (1) “, as a result of section 388(2),” were omitted;
  - (c) in subsection (5) the words “or the PRA” were omitted.
- (4) Section 133B(1) (offences) applies as if—
  - (a) in paragraph (a), “or the PRA” were omitted;
  - (b) paragraphs (b) and (c) were omitted.