
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Securitisation Regulations 2023

PART 8

Monitoring, disciplinary measures and procedures

Interpretation of Part 8

35. In this Part—

“regulated person” means a person who is not an authorised person and is—

- (a) an original lender,
- (b) an originator,
- (c) a person engaged in the activity specified in regulation 4(1)(b),
- (d) a sponsor,
- (e) an SSPE,
- (f) a third party verifier, or
- (g) a securitisation repository;

“a regulator” means the FCA or the PRA;

“relevant requirement” means a requirement imposed—

- (a) by designated activity rules made by virtue of regulation 5,
- (b) by a direction under section 71O of FSMA 2000 given by virtue of regulation 6,
- (c) by or under Part 4 (simple, transparent and standardised securitisations), Part 5 (securitisation repositories) or Part 6 (registration of third party verifying STS compliance),
- (d) by regulation 38 in a case where the temporary prohibition was imposed by the FCA, or
- (e) by the FCA under any other provision of these Regulations or under a provision of FSMA 2000 applied by these Regulations.

Monitoring and enforcement by FCA

36.—(1) The FCA must maintain arrangements designed to enable it to determine whether regulated persons are complying with relevant requirements.

(2) The FCA must also maintain arrangements for enforcing compliance by regulated persons with relevant requirements.

Temporary prohibition relating to management functions

37.—(1) If the FCA considers that an individual has contravened, or has been knowingly concerned in the contravention of, a relevant requirement, the FCA may impose a temporary

prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(2) If the PRA considers that an individual has contravened, or has been knowingly concerned in the contravention of—

- (a) PRA securitisation rules,
- (b) regulation 38, in a case where the temporary prohibition was imposed by the PRA, or
- (c) a requirement imposed under section 55M of FSMA 2000⁽¹⁾ (imposition of requirements by PRA) which relates to securitisations,

the PRA may impose a temporary prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(3) A temporary prohibition imposed under paragraph (1) or (2) expires at the end of such period as the regulator imposing it may specify, but the imposition of a temporary prohibition does not affect the regulator’s power to impose a further temporary prohibition under that paragraph.

(4) A temporary prohibition under paragraph (1) or (2) may relate to the management of—

- (a) a named originator, sponsor or SSPE,
- (b) an originator, sponsor or SSPE of a specified description, or
- (c) any originator, sponsor or SSPE.

(5) A regulator may revoke a temporary prohibition imposed by it under this regulation, or vary it so as to reduce the period for which it has effect.

(6) In this regulation, “PRA securitisation rules” means rules made by the PRA under section 137G of FSMA 2000 which make provision of the kind mentioned in regulation 5(2) in relation to securitisations.

Temporary prohibition relating to management functions: obligations on originator, sponsor or SSPE

38. An originator, sponsor or SSPE must take reasonable care to ensure that no individual holds an office or position involving responsibility for taking decisions about the management of that entity in contravention of a temporary prohibition imposed under regulation 37(1) or (2).

Imposition of temporary ban on STS notifications

39.—(1) If the FCA considers that—

- (a) an originator, sponsor or SSPE has failed to meet the requirements of designated activity rules made by virtue of regulation 5, so far as those rules relate to STS securitisations, or
- (b) an originator or sponsor has made a misleading STS notification,

the FCA may, for such period as it considers appropriate, temporarily ban the originator or sponsor from making an STS notification.

(2) The FCA may—

- (a) revoke a temporary ban imposed under paragraph (1), or
- (b) vary the period for which the temporary ban has effect.

(3) The FCA must consult the PRA before imposing a temporary ban on an originator or sponsor who is a PRA-authorized person, or varying such a ban so as to extend the period for which it has effect.

(1) Section 55M was inserted by section 11(2) of the Financial Services Act 2012. There is an amendment that is not relevant.

Procedure for imposition, variation or revocation of a temporary ban on STS notifications

- 40.**—(1) Where the FCA exercises its functions under regulation 39, its decision takes effect—
- (a) immediately, if the notice under paragraph (3) states that is the case,
 - (b) on such other date as may be specified in the notice, or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (2) A decision of the FCA made under regulation 39 may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising this power, reasonably considers that it is necessary for the decision to take effect immediately (or on that date).
- (3) If the FCA proposes to exercise, or exercises, its functions under regulation 39, it must give the originator or sponsor a written notice.
- (4) The notice must—
- (a) give details of the temporary ban or variation,
 - (b) state the FCA’s reasons for the temporary ban, or the revocation of the temporary ban or the variation of the temporary ban,
 - (c) inform the originator or sponsor that they may make representations to the FCA within such period as may be specified in the notice (whether or not the originator or sponsor has referred the matter to the Tribunal),
 - (d) inform the originator or sponsor when the temporary ban, or the revocation or variation of the temporary ban, takes effect, and
 - (e) inform the originator or sponsor of their right to refer the matter to the Tribunal and an indication of the procedure for such a reference.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by a person to whom the notice was given, the FCA decides—
- (a) to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed,
 - (b) not to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed,
 - (c) to revoke the temporary ban, or the variation of the temporary ban, which has taken effect,
 - (d) if the temporary ban has been imposed or varied, not to revoke the temporary ban or variation of the temporary ban, or
 - (e) to impose or vary the temporary ban in a different way,
- it must give the person written notice.
- (7) A notice given under paragraph (6)(a), (d) or (e) must inform the person to whom it is given of the person’s right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.
- (8) For the purposes of paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

Public censure

- 41.**—(1) If the FCA considers that—
- (a) a regulated person has contravened a relevant requirement,

- (b) a member of the management body of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement,
- (c) another member of the senior management of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement, or
- (d) a regulated person has failed to comply with regulation 38 as an originator, sponsor or SSPE, in a case where the temporary prohibition was imposed by the FCA,

the FCA may publish a statement to that effect.

(2) If a regulator considers that an individual on whom a temporary prohibition has been imposed under regulation 37 by that regulator has breached the prohibition, the regulator may publish a statement to that effect.

(3) If the PRA considers that a regulated person has failed to comply with regulation 38 as an originator, sponsor or SSPE, in a case where the temporary prohibition was imposed by the PRA, the PRA may publish a statement to that effect.

Financial penalties

42.—(1) If the FCA considers that—

- (a) a regulated person has contravened a relevant requirement,
- (b) a member of the management body of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement,
- (c) another member of the senior management of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement, or
- (d) a regulated person has failed to comply with regulation 38 as an originator sponsor or SSPE, in a case where the temporary prohibition was imposed by the FCA,

the FCA may impose a penalty of such amount as it considers appropriate.

(2) If a regulator decides that an individual on whom a temporary prohibition has been imposed under regulation 37 by that regulator has breached the prohibition, the regulator may impose a penalty of such amount as it considers appropriate on that individual.

(3) If the PRA considers that a regulated person has failed to comply with regulation 38 as an originator, sponsor or SSPE, in a case where the temporary prohibition was imposed by the PRA, the PRA may impose a penalty of such amount as it considers appropriate.

(4) A penalty imposed by a regulator under this regulation is payable to that regulator and may be recovered as a debt owed to that regulator.

Warning notice

43.—(1) If the FCA proposes—

- (a) to refuse under regulation 27 an application under regulation 26 for registration as a third party verification service,
- (b) to withdraw the registration of a third party verification service under regulation 31,
- (c) to refuse an application to withdraw a person's registration to provide a third party verification service under regulation 32,
- (d) to impose a temporary prohibition under regulation 37,

- (e) to publish a statement in respect of a person under regulation 41,
- (f) to impose a penalty on a person under regulation 42,

it must give the person a warning notice.

(2) If the PRA proposes—

- (a) to impose a temporary prohibition under regulation 37,
- (b) to publish a statement in respect of a person under regulation 41,
- (c) to impose a penalty on a person under regulation 42,

it must give the person a warning notice.

(3) A warning notice about a proposal to impose a temporary prohibition in relation to management functions under regulation 37 must set out the terms of the proposed prohibition.

(4) A warning notice about a proposal to publish a statement under regulation 41 must set out the terms of the statement.

(5) A warning notice about a proposal to impose a penalty under regulation 42 must state the amount of the proposed penalty.

(6) A warning notice must inform the person concerned that the person may make representations to the regulator who gave the notice within such period as may be specified in the notice (whether or not the person concerned has referred the matter to the Tribunal).

Decision notice

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

- (a) to refuse under regulation 27 an application under regulation 26 for registration as a third party verification service,
- (b) to withdraw a person's registration to provide a third party verification service under regulation 31,
- (c) to refuse an application to withdraw a person's registration to provide a third party verification service under regulation 32,
- (d) to impose a temporary prohibition under regulation 37 (whether or not in the terms proposed),
- (e) to publish a statement in respect of a person under regulation 41 (whether or not in the terms proposed),
- (f) to impose a penalty on a person under regulation 42 (whether or not of the amount proposed),

the FCA must give the person concerned a decision notice.

(2) If, having considered any representations made in response to the warning notice, the PRA decides—

- (a) to impose a temporary prohibition under regulation 37,
- (b) to publish a statement in respect of a person under regulation 41,
- (c) to impose a penalty on a person under regulation 42,

it must give the person a decision notice.

(3) A decision notice about a decision to impose a temporary prohibition in relation to management functions under regulation 37 must set out the terms of the prohibition.

(4) A decision notice about a decision to publish a statement under regulation 41 must set out the terms of the statement.

(5) A decision notice about a decision to impose a penalty under regulation 42 must state the amount of the penalty.

(6) After a statement under regulation 41 (public censure) is published, the regulator that published it must send a copy of it to the person concerned and to any person to whom a copy of the decision notice is given under section 393(4) of FSMA 2000(2) (third party rights), as applied by Schedule 1.

Consultation in relation to certain enforcement action

45.—(1) The FCA must consult the PRA before giving a warning notice under regulation 43(1) (a), (b), (c), (e) or (f) or a decision notice under regulation 44(1)(a) (b), (c), (e) or (f) in relation to a person who—

- (a) is a PRA-authorised person, or
- (b) has a qualifying relationship with a PRA-authorised person.

(2) The FCA must consult the PRA before giving a warning notice under regulation 43(1)(d) or a decision notice under regulation 44(1)(d) if as a result of the prohibition in question an individual would be prohibited from performing a management function in relation to a PRA-authorised person.

(3) The PRA must consult the FCA before giving a warning notice under regulation 43(2).

(4) A person has a qualifying relationship with a PRA-authorised person for the purposes of this regulation if the person is a member of the PRA-authorised person's immediate group.

(5) In this regulation "immediate group" has the meaning given in section 421ZA of FSMA 2000(3).

Statement of policy

46.—(1) Each regulator must prepare and issue a statement of policy with respect to—

- (a) the imposition of a prohibition under regulation 37,
- (b) the period of a prohibition under that regulation,
- (c) the imposition of penalties under regulation 42, and
- (d) the amount of penalties under that regulation.

(2) The policy must require the regulator, in determining the amount of the penalty to be imposed on any person, to take account of all relevant circumstances including, where appropriate—

- (a) the impact, gravity and duration of the contravention for which the penalty is to be imposed;
- (b) the extent of the person's responsibility for the contravention;
- (c) the financial position of the person;
- (d) the amount of profit gained or loss avoided as a result of the contravention, so far as this can be determined;
- (e) the amount of loss sustained as a result of the contravention by any other person, so far as this can be determined;
- (f) the level of co-operation by the person with the regulator (without prejudice to the need to ensure that the person accounts for or makes good any profit sustained or loss avoided as a result of the contravention);

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

(3) Section 421ZA was inserted by section 48(2) of the Financial Services Act 2012.

- (g) any previous contravention by the person for which a penalty was or could have been imposed under regulation 42.
- (3) A regulator may at any time alter or replace a statement issued by it under this regulation.
- (4) If a statement issued under this regulation 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 regulation.
- (6) A statement issued under this regulation 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 regulation 37 (temporary prohibition relating to management functions) or under regulation 42 (financial penalties) in the case of any particular contravention, a regulator must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

Statement of policy: procedure

- 47.**—(1) Before a regulator issues a statement under regulation 46, 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 proposed statement 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 paragraph (2).
- (4) If the regulator issues the proposed statement, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with paragraph (2), and
 - (b) its response to them.
- (5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with paragraph (4)) publish details of the difference.
- (6) The regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).

Restriction on penalties

- 48.**—(1) A person who is convicted of an offence under section 398 of FSMA 2000 as applied by paragraph 13 of Schedule 1 to these Regulations is not subsequently liable to a penalty under regulation 42 (financial penalties) in respect of the same act or omission.
- (2) A person on whom a penalty has been imposed under regulation 42 (financial penalties) is not subsequently liable for an offence under section 398 of FSMA 2000 as applied by paragraph 13 of Schedule 1 to these Regulations in respect of the same act or omission.

Right to refer matters to Tribunal

- 49.**—(1) A person to whom a decision notice is given under regulation 44 may refer the matter to the Tribunal.

(2) If the FCA decides temporarily to withdraw a registration to provide a third party verification service under regulation 29, or varies the details of the temporary withdrawal so as to extend the period for which it has effect, the person concerned may refer the matter to the Tribunal.

(3) If the FCA imposes a temporary ban under regulation 39, or varies such a ban so as to extend the period for which it has effect, the person concerned may refer the matter to the Tribunal.