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## STATUTORY INSTRUMENTS

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# 2017 No. 1301

## The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017

### PART 3

#### Information and directions

#### Interpretation

6. In this Part—

“body corporate”—

- (a) includes—
  - (i) a body corporate incorporated under the laws of the United Kingdom or any part of the United Kingdom, and
  - (ii) a body corporate constituted under the law of a country or territory outside the United Kingdom;
- (b) but does not include—
  - (i) a corporation sole, or
  - (ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“connected person”, in relation to a self-regulatory organisation, means—

- (a) if the self-regulatory organisation is a body corporate, any person who is or has been—
  - (i) an officer or manager of the body corporate;
  - (ii) an employee of the body corporate;
  - (iii) an agent of the body corporate;
  - (iv) an officer, manager or agent of a parent undertaking of the body corporate;
- (b) if the self-regulatory organisation is a partnership, any person who is or has been a member, manager, employee or agent of the partnership;
- (c) if the self-regulatory organisation is an unincorporated association of persons (other than a partnership), any person who is or has been a member, officer, manager, employee or agent of the association;

“manager”, in relation to a body corporate, partnership or other unincorporated association, means a person who has control, authority or responsibility for managing the business of that body, partnership or association;

“officer” means—

- (a) in relation to a body corporate or a parent undertaking of a body corporate—
  - (i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or

**Status:** Point in time view as at 18/01/2018.

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- (ii) an individual who is a controller of the body, or a person purporting to act as a controller;
  - (b) in relation to an unincorporated association, any officer of the association or any member of its governing body, or a person purporting to act in such a capacity;
- “officer of the FCA” means an officer or agent of the FCA or a member of the FCA's staff;  
“skilled person” means a person appointed under regulation 13(2).

### **Power to require information**

7.—(1) The FCA may, by notice in writing to a person who is (or was at any time) a self-regulatory organisation or a connected person, require that person to—

- (a) provide specified information, or information of a specified description;
  - (b) produce specified documents, or documents of a specified description; or
  - (c) attend before an officer of the FCA at a time and place specified in the notice and answer questions.
- (2) The information or documents must be provided or produced—
- (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.

(3) An officer of the FCA who has written authorisation from the FCA to do so may require a person who is (or was at any time) a self-regulatory organisation or a connected person without delay to—

- (a) provide the officer with specified information or information of a specified description; or
- (b) produce to the officer specified documents or documents of a specified description.

(4) The powers in this regulation may only be exercised in relation to information or documents which are reasonably required by the FCA in connection with the exercise by the FCA of any of its functions under these Regulations.

(5) Where the FCA or an officer of the FCA requires information to be provided or documents to be produced under paragraph (1) or (3), the FCA or the officer must give the reasons why the information is required to be provided or the documents produced, unless the disclosure of those reasons would be likely to prejudice any criminal investigation or criminal proceedings.

- (6) An officer of the FCA may require—
  - (a) information contained in a computer or other storage device, or recorded in any other way otherwise than in legible form to be produced to it in legible form or in a form from which the information can readily be produced in visible and legible form, and
  - (b) any information provided under this regulation to be provided in such form as the officer may reasonably require.

(7) The production of a document does not affect any lien which a person has on the document.

### **Retention of documents provided under regulation 7**

8.—(1) The FCA may retain any material which was provided under regulation 7 for so long as it is necessary to retain it (rather than copies of it) in connection with the exercise of the functions of the FCA under these Regulations for the purposes for which the information was required under regulation 7.

- (2) If an officer of the FCA has reasonable grounds for suspecting that—
  - (a) the material may need to be produced for the purposes of legal proceedings, and

(b) it might otherwise be unavailable for those purposes,  
it may be retained until the proceedings are concluded.

(3) A person claiming to be the owner of any material provided under regulation 7 may apply to the Crown Court or (in Scotland) the sheriff or the summary sheriff for an order for the delivery of the material to the person appearing to the court, the sheriff or the summary sheriff to be the owner.

(4) If on an application under paragraph (3) the court or (in Scotland) the sheriff or the summary sheriff cannot ascertain who is the owner of the material the court, the sheriff or the summary sheriff may make such order as the court, the sheriff or the summary sheriff thinks fit.

(5) An order under paragraph (3) or (4) does not affect the right of any person to take legal proceedings against any person in possession of material for the recovery of the material.

### **Provision of information: safeguards**

9.—(1) A person may not be required under regulation 7—

- (a) to produce excluded material, or
- (b) to provide information, produce documents or answer questions which that person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the High Court.

(2) The provision of information in accordance with regulation 7 is not to be taken to breach any restriction on the disclosure of information, however imposed.

(3) Where a disclosure is made in good faith in accordance with regulation 7 no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

(4) In the application of this regulation to Scotland, the references in paragraph (1)—

- (a) to proceedings in the High Court are to be read as references to proceedings in the Court of Session, and
- (b) to an entitlement on grounds of legal professional privilege are to be read as references to an entitlement on the grounds of confidentiality of communication—
  - (i) between professional legal advisers and their clients, or
  - (ii) made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(5) For the purposes of paragraph (1)—

“excluded material” means personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which is held subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in, or made under, an Act passed after these Regulations;

“personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to the individual's physical or mental health.

### **Admissibility of statements**

10.—(1) A statement made by a person in response to a requirement imposed under regulation 7(1)(c) may not be used in evidence against the person in criminal proceedings.

(2) Paragraph (1) does not apply—

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- (a) on a prosecution for an offence under section 5 of the Perjury Act 1911 (false statements) <sup>M1</sup>,
  - (b) on a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements) <sup>M2</sup>;
  - (c) on a prosecution for an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations) <sup>M3</sup>; or
  - (d) for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).
- (3) A statement may not be used by virtue of paragraph (2)(d) against a person unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,
- by that person or on their behalf in the proceedings arising out of the prosecution.

#### Marginal Citations

- M1** 1911 c.6. Section 5 was amended by virtue of section 1(2) of the [Criminal Justice Act 1948 \(c.58\)](#).
- M2** S.I. 1979/1714 (NI 19).
- M3** 1995 c.39.

#### Confidential information

**11.**—(1) Subject to paragraph (2), confidential information must not be disclosed by any of the following (each a “primary recipient”)—

- (a) the FCA;
- (b) any person who is or has been an officer of the FCA;
- (c) a skilled person;
- (d) any person who is or has been employed by a skilled person,

or by any person obtaining the information directly or indirectly from a primary recipient.

(2) This regulation does not prevent disclosure where the disclosure—

- (a) has the consent of—
  - (i) the person from whom the primary recipient obtained the information; and
  - (ii) if different, the person to whom it relates;
- (b) is made in accordance with regulation 12;
- (c) is made by a skilled person to the FCA (and the FCA is then treated for the purposes of paragraph (1) as a person obtaining the information from a primary recipient); or
- (d) is required by law.

(3) In this regulation, “confidential information” means information which—

- (a) relates to the business or other affairs of any person;
- (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the primary recipient under these Regulations; and
- (c) is not prevented from being confidential information by paragraph (4).

(4) Information is not confidential information if—

- (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this regulation; or
- (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

## **Disclosure**

**12.**—(1) The FCA may disclose information it holds to a relevant authority, provided the disclosure is made—

- (a) for purposes connected with the effective exercise of the functions of the FCA under these Regulations;
- (b) for purposes connected with the effective exercise of the functions of that relevant authority under these Regulations or the MLR; or
- (c) with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings.

(2) Information disclosed to a relevant authority under paragraph (1) may not be further disclosed by that authority except where the further disclosure—

- (a) has the consent of the person or persons mentioned in regulation 11(2)(a);
- (b) is made to another relevant authority for purposes connected with the effective exercise of the functions of either relevant authority under these Regulations or the MLR;
- (c) is made by, or to, the Secretary of State for purposes connected with the effective exercise of his or her functions under enactments relating to companies and insolvency;
- (d) is made with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings; or
- (e) is required by law.

(3) For the purposes of this regulation, “relevant authority” means—

- (a) the Commissioners for Her Majesty's Revenue and Customs;
- (b) the Financial Reporting Council;
- (c) the Gambling Commission;
- (d) the Legal Services Board;
- (e) the National Crime Agency;
- (f) an overseas authority;
- (g) the police forces maintained under section 2 of the Police Act 1996 <sup>M4</sup> (maintenance of police forces);
- (h) the Police of the Metropolis;
- (i) the Police for the City of London;
- (j) the Police Service of Scotland;
- (k) the Police Service of Northern Ireland;
- (l) a self-regulatory organisation;
- (m) the Secretary of State;
- (n) the Serious Fraud Office;
- (o) a skilled person;
- (p) the Treasury.

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(4) For the purposes of paragraph (3)(f), an “overseas authority” means an authority within the meaning of regulation 50(4) of the MLR which undertakes to comply with such conditions in relation to the information as the FCA considers appropriate.

#### Marginal Citations

**M4** 1996 c.16. Section 2 was amended by paragraph 3 and 4 of Schedule 16 to the [Police Reform and Social Responsibility Act 2011 \(c.13\)](#).

### Report by a skilled person

**13.**—(1) This regulation applies where the FCA reasonably considers that a report by a skilled person, concerning a matter relating to the exercise of the FCA's functions under these Regulations, is required in connection with the exercise by the FCA of any of its functions under these Regulations.

(2) The FCA may either—

- (a) by notice in writing to the self-regulatory organisation, require the self-regulatory organisation to appoint a skilled person to provide the FCA with a report on the matter concerned, or
- (b) itself appoint a skilled person to do so.

(3) When acting under paragraph (2)(a), the FCA may require—

- (a) the report to be in such form as may be specified in the notice; and
- (b) that the contract between the skilled person and the self-regulatory organisation contain certain terms that the FCA considers appropriate.

(4) The FCA must give notice in writing of an appointment under paragraph (2)(b) to the self-regulatory organisation.

(5) References in this regulation to a skilled person are to a person—

- (a) appearing to the FCA to have the skills necessary to make a report on the matter concerned, and
- (b) where the appointment is to be made by the self-regulatory organisation, nominated or approved by the FCA.

(6) Subject to paragraph (7), it is the duty of the self-regulatory organisation and any connected person to give the skilled person all such assistance as the skilled person may reasonably require.

(7) Regulation 9 applies to the provision of any information under paragraph (6) as it applies to the provision of information under regulation 7.

### Directions

**14.**—(1) The FCA may give a direction in writing to a self-regulatory organisation.

(2) A direction may be given for the purpose of—

- (a) remedying a failure to comply with a supervision requirement;
- (b) preventing a failure to comply, or continued non-compliance, with a supervision requirement.

(3) A direction may require or prohibit the taking of specified action.

(4) In deciding whether to give a direction to a self-regulatory organisation, the FCA must consider whether at the time the self-regulatory organisation followed—

- (a) any relevant guidance which was at the time issued by the FCA;

- (b) any relevant guidelines issued by a European Supervisory Authority in accordance with Articles 17, 18(4) or 48(10) of the fourth money laundering directive.

**Status:**

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