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## STATUTORY INSTRUMENTS

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# 2017 No. 699

## The Data Reporting Services Regulations 2017

### PART 4

#### Administration and enforcement

#### CHAPTER 1

#### The FCA

#### *Functions of the FCA*

#### Functions of the FCA

17.—(1) The FCA is the competent authority for the purposes of Title V of the markets in financial instruments directive.

(2) The FCA has the functions conferred on it by these Regulations.

(3) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, and 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.

(4) For the purposes of section 1B as applied by paragraph (3), section 1F of the Act must be read as if “relevant markets” includes the market for data reporting services.

#### Marginal Citations

**M1** 2000 c.8; sections 1B and 1F were inserted by section 6 of the [Financial Services Act 2012 \(c.21\)](#).  
Section 1B was amended by paragraph 3 of Schedule 3 to the [Pension Schemes Act 2015 \(c.8\)](#).

#### Monitoring and enforcement

18.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under these Regulations are complying with them.

(2) The FCA must also maintain arrangements for enforcing the provisions of these Regulations.

#### Co-operation and consultation

19.—(1) The FCA must take such steps as it considers appropriate to co-operate with persons who have functions similar to the functions of the FCA under these Regulations.

(2) The FCA must consult the Bank of England before—

**Status:** Point in time view as at 03/07/2017.

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- (a) authorising a recognised clearing house or a recognised CSD to provide a data reporting service;
- (b) varying or cancelling a recognised clearing house's or a recognised CSD's authorisation to provide a data reporting service;
- (c) imposing, varying or withdrawing a restriction on a recognised clearing house's or a recognised CSD's authorisation to provide a data reporting service under regulation 22;
- (d) publishing a statement under regulation 23 in relation to a contravention by a recognised clearing house or a recognised CSD;
- (e) imposing a penalty under regulation 24 in relation to a contravention by a recognised clearing house or a recognised CSD;
- (f) appointing a person to prepare a report under section 166(3)(b) of the Act <sup>M2</sup> (reports by skilled persons) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (g) exercising a power under section 166A(2) of the Act <sup>M3</sup> (appointment of skilled person to collect and update information) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (h) appointing a person to carry out an investigation under section 167(1) of the Act <sup>M4</sup> (appointment of persons to carry out general investigations) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (i) appointing a person to carry out an investigation under section 168(3) of the Act (appointment of persons to carry out investigations in particular cases) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD;
- (j) appointing a person to carry out an investigation under section 169(1)(b) of the Act <sup>M5</sup> (investigations etc. in support of overseas regulator) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD.

#### Marginal Citations

- M2** [Section 166](#) was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.
- M3** [Section 166A](#) was inserted by paragraph 6 of Schedule 12 to the Financial Services Act 2012.
- M4** [Section 167\(1\)](#) was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and [S.I. 2007/126](#).
- M5** [Section 169\(1\)](#) was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

#### Guidance

**20.**—(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 these Regulations; 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;
- (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>M6</sup> (notification of FCA guidance to the Treasury) applies with respect to guidance given by the FCA under this regulation 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 the Data Reporting Services Regulations 2017 which is—

- (a) given to persons generally or to data reporting services providers generally,
- (b) intended to have continuing effect, and
- (c) given in writing or other legible form.”;

- (b) subsection (6) were omitted.

#### **Marginal Citations**

**M6** 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**

**21.**—(1) A data reporting service provider must provide the FCA with such information in respect of its compliance or non-compliance with any requirement imposed by or under these Regulations as the FCA may direct.

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

(3) If at any time a data reporting service provider considers that it is unable to comply with a requirement imposed by or under these Regulations, it must as soon as reasonably practicable notify the FCA of that fact, including the reasons why it is unable to comply.

#### *Restrictions on authorisation*

### **Restrictions on authorisation to carry on data reporting services**

**22.**—(1) If the FCA considers that a data reporting service provider (“P”) has contravened a requirement imposed by or under these Regulations, it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(2) If the FCA considers that there are objective and demonstrable grounds for believing that a change or proposed change to the management of P poses a threat to the sound and prudent management of P, to the adequate consideration of the interests of its clients or to the integrity of the market, it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(3) A restriction may, in particular, be imposed so as to require P to take, or refrain from taking, specified action.

- (4) The FCA may—

- (a) withdraw a restriction; or

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- (b) vary a restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (5) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the data reporting services that P carries on.
- (6) Where the FCA proposes to impose a restriction under this regulation, section 55Y of the Act<sup>M7</sup> (exercise of own-initiative power: procedure) applies as if—
  - (a) each reference to either regulator's own-initiative variation power or own-initiative requirement power were a reference to the FCA's power to impose a restriction under this regulation;
  - (b) each reference to the regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only;
  - (c) each reference to an authorised person were a reference to P;
  - (d) each reference to a variation of permission, or the imposition or variation of a requirement, were a reference to a restriction imposed on an authorisation granted under these Regulations to P; and
  - (e) the reference in subsection (12) to section 391(8) were a reference to section 391(8) as applied by these Regulations.

#### **Marginal Citations**

**M7** [Section 55Y](#) was inserted by section 11 of the Financial Services Act 2012.

### *Administrative sanctions*

#### **Public censure**

**23.**—(1) If the FCA considers that—

- (a) a relevant person has contravened a requirement imposed by or under these Regulations,
- (b) a member of the management body of a relevant person is responsible for the contravention by the relevant person of a requirement imposed by or under these Regulations, or
- (c) another member of the senior management of a relevant person is responsible for the contravention by the relevant person of a requirement imposed by or under these Regulations,

the FCA may publish a statement to that effect.

(2) In this regulation, “relevant person” means—

- (a) a data reporting service provider,
- (b) an authorised person who is not a data reporting service provider,
- (c) a recognised body which is not a data reporting service provider, or
- (d) a recognised CSD which is not a data reporting service provider.

#### **Financial penalties**

**24.**—(1) If the FCA considers that a relevant person has contravened a requirement imposed by or under these Regulations, it may impose a penalty of such amount as it considers appropriate on—

- (a) the relevant person;

- (b) a member of the management body of the relevant person if the FCA considers the member is responsible for the contravention;
  - (c) another member of the senior management of the relevant person if the FCA considers the member is responsible for the contravention.
- (2) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.
- (3) In this regulation, “relevant person” means—
- (a) a data reporting service provider,
  - (b) an authorised person who is not a data reporting service provider,
  - (c) a recognised body which is not a data reporting service provider, or
  - (d) a recognised CSD which is not a data reporting service provider.

### **Warning notice**

- 25.**—(1) If the FCA proposes to—
- (a) publish a statement in respect of a person under regulation 23; or
  - (b) impose a penalty on a person under regulation 24,

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**

- 26.**—(1) If, having considered any representations made in response to the warning notice, the FCA decides to—
- (a) publish a statement under regulation 23 (whether or not in the terms proposed); or
  - (b) impose a penalty under regulation 24 (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 the FCA decides to—
- (a) publish a statement in respect of a person under regulation 23; or
  - (b) impose a penalty on a person under regulation 24,

the person may refer the matter to the Tribunal.

- (5) After a statement under regulation 23 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) of the Act<sup>M8</sup> (third party rights) (as applied by regulation 37).

#### **Marginal Citations**

**M8** Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

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### **Statements of policy**

- 27.—(1) The FCA must prepare and issue a statement of policy with respect to—
- (a) the imposition of penalties under regulation 24; and
  - (b) the amount of penalties under that regulation.
- (2) The FCA'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) The FCA 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 the FCA, the FCA must issue the altered or replacement statement.
- (5) The FCA 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 the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (7) The FCA 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 24 in the case of any particular contravention, the FCA 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.

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

- 28.—(1) Before the FCA issues a statement under regulation 27, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA must have regard to any representations made to it in accordance with paragraph (2).
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
- (a) the representations made to 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 FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).
- (7) This regulation also applies to a proposal to alter or replace a statement.

## Offences

### Misleading the FCA

**29.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement imposed by or under these Regulations 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 these Regulations.

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

### Breach of the prohibition on provision of data reporting service

**30.**—(1) Unless paragraph (2) applies, a person who breaches regulation 5(1) is guilty of an offence.

(2) This regulation does not apply to—

- (a) an authorised person;
- (b) a recognised body;
- (c) a recognised CSD.

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

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

**31.**—(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 regulation 24 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under regulation 24 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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## CHAPTER 2

### Application of the Act for the purposes of the Regulations

#### Application of Part 9 of the Act (hearings and appeals)

**32.**—(1) Part 9 of the Act <sup>M9</sup> (hearings and appeals) applies with respect to proceedings pursuant to references to the Tribunal under these Regulations and under the Act as applied by these Regulations (“relevant proceedings”) as it applies with respect to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

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

(a) in subsection (1)—

(i) “(whether made under this or any other Act)” were omitted;

(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) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;

(d) 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 either of the following decisions—

(a) a decision to publish a statement under regulation 23 of the Data Reporting Services Regulations 2017;

(b) a decision to impose a penalty under regulation 24 of those Regulations.”.

(3) Section 133A of the Act (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if—

(a) for subsection (1) there were substituted—

“(1) In determining in accordance with section 133(5) (as applied by the Data Reporting Services Regulations 2017) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Data Reporting Services Regulations 2017, have had power to take when giving the notice.”;

(b) in subsection (5) “or the PRA” were omitted.

(4) Section 133B of the Act (offences) applies as if in subsection (1)—

(a) in paragraph (a) “or the PRA” were omitted;

(b) paragraphs (b) and (c) were omitted.

#### Marginal Citations

**M9** Part 9 was amended by section 23 of the Financial Services Act 2012, section 4 of the [Financial Services \(Banking Reform\) Act 2013 \(c.33\)](#), [paragraph 83](#) of Schedule 9 to the [Crime and Courts Act 2013 \(c.22\)](#), [S.I.](#) 2010/22, 2013/1388, 2014/3329 and 2016/680.



### **Application of Part 11 of the Act (information gathering and investigations)**

**33.**—(1) Part 11 of the Act<sup>M10</sup> (information gathering and investigations) applies with respect to the discharge by the FCA of its functions under these Regulations as it applies with respect to the discharge by the FCA of its functions under the Act, with the following modifications.

(2) Part 11 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
- (c) each reference to an authorised person were a reference to a data reporting service provider;
- (d) each reference to the PRA were omitted;
- (e) each reference to a regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only.

(3) Section 165 of the Act (regulators' power to require information: authorised persons etc.) applies as if subsections (4)(b), (7)(b) to (e) and (8A) were omitted.

(4) 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)) of the Act do not apply.

(5) Section 166 of the Act (reports by skilled persons) applies as if subsections (10) and (11) were omitted.

(6) Section 166A of the Act (appointment of skilled person to collect and update information) applies as if—

(a) for subsection (1) there were substituted—

“(1) This section applies if the FCA considers that a person has contravened a requirement imposed by or under the Data Reporting Services Regulations 2017 to collect, and keep up to date, information of a description specified in those Regulations.”;

(b) subsection (10) were omitted.

(7) Section 167 of the Act (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the Data Reporting Services Regulations 2017 (“a person subject to the 2017 Regulations”);

(b) a particular aspect of that business; or

(c) the ownership or control of a person subject to the 2017 Regulations.”;

(b) subsections (2)(c) and (3A) were omitted;

(c) for subsection (4) there were substituted—

“(4) The power conferred by this section may be exercised in relation to a person who was formerly a person subject to the 2017 Regulations but only in relation to—

(a) business carried on when the person was a person subject to the 2017 Regulations; or

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- (b) the ownership or control of a person who was formerly a person subject to the 2017 Regulations at any time when the person was a person subject to the 2017 Regulations.”;
- (d) subsections (5A) and (6) were omitted.
- (8) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if—
  - (a) for subsection (1) there were substituted—
    - “(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that—
      - (a) a data reporting service provider may have contravened a requirement imposed by or under the Data Reporting Services Regulations 2017;
      - (b) an authorised person who is not a data reporting service provider may have contravened a requirement imposed by or under those Regulations;
      - (c) a recognised body or a recognised CSD which is not a data reporting service provider may have contravened a requirement imposed by or under those Regulations;
      - (d) a member of the management body of a person referred to in paragraph (a), (b) or (c) or another member of the senior management of a person referred to in paragraph (a), (b) or (c) may be responsible for the contravention of a requirement imposed by or under those Regulations; or
      - (e) a person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;
    - (b) subsections (2), (4) and (5) were omitted;
    - (c) for subsection (6) there were substituted—
      - “(6) “Investigating authority” means the FCA.”.
- (9) Section 169 of the Act (investigations etc. in support of overseas regulator) applies as if—
  - (a) subsection (2A) were omitted;
  - (b) for subsection (13) there were substituted—
    - “(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the Data Reporting Services Regulations 2017.”.
- (10) Section 169A of the Act (support of overseas regulator with respect to financial stability) does not apply.
- (11) Section 170 of the Act (investigations: general) applies as if—
  - (a) each reference to the investigating authority were a reference to the FCA;
  - (b) in subsection (1) “or (5)” were omitted;
  - (c) for subsection (3) there were substituted—
    - “(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the FCA believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;
  - (d) subsection (10) were omitted.
- (12) Section 171 of the Act (powers of persons appointed under section 167) applies as if subsections (3A) and (7) were omitted;

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(13) Section 172 of the Act (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.

(14) Section 173 of the Act (powers of persons appointed as a result of section 168(2)) does not apply.

(15) Section 174 of the Act (admissibility of statements made to investigators) applies as if—

- (a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies” were omitted;
- (b) in subsection (3)(a) for “398” substitute “ regulation 29 of the Data Reporting Services Regulations 2017 ”;
- (c) subsection (3A) were omitted;
- (d) in subsection (4) the words from “or (5),” to the end were omitted;
- (e) in subsection (5) “, 173” were omitted.

(16) Section 175 of the Act (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.

(17) Section 176 of the Act (entry of premises under warrant) applies as if—

(a) for subsection (1) there were substituted—

“(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.”;

- (b) in subsection (3)(a) “or an appointed representative” were omitted;
- (c) in subsection (10) “or (5)” were omitted;
- (d) in subsection (11)—
  - (i) in paragraph (a) “87C, 87J,” and “,165A, 169A” were omitted;
  - (ii) in paragraph (b) “, 173” were omitted.

#### Marginal Citations

**M10** Part 11 was amended by paragraph 54 of Schedule 26 to the [Criminal Justice Act 2003 \(c.44\)](#), [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](#), paragraphs 36 and 37 of Schedule 2 to the [Bank of England and Financial Services Act 2016 \(c.14\)](#), [paragraph 9](#) of Schedule 2 to the [Investigatory Powers Act 2016 \(c.25\)](#), [S.I. 2001/1090](#), [2005/1433](#), [2007/126](#), [2011/1043](#), [2012/2554](#), [2013/1773](#), [2015/575](#) and [2016/680](#). There are other amendments but none is relevant.

#### Information given by an auditor

**34.** Sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: persons with close links) and 344 (duty of auditor or actuary resigning etc. to give notice) of the Act <sup>M11</sup> apply with respect to the auditor of a data reporting service provider as if—

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) each reference to a regulator were a reference to the FCA;
- (c) each reference to “the appropriate regulator” were a reference to the FCA;

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- (d) references to an actuary were omitted;
- (e) sections 342(2), 343(2) and 344(4) were omitted.

#### Marginal Citations

**M11** Section 342 was amended by paragraph 4 of Schedule 13 to the Financial Services Act 2012 and [S.I. 2013/3115](#). Section 343 was amended by paragraph 5 of Schedule 13 to the Financial Services Act 2012 and [S.I. 2013/3115](#). Section 344 was amended by paragraph 6 of Schedule 13 to the Financial Services Act 2012.

#### Restrictions on disclosure of information

**35.** Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of the Act <sup>M12</sup> apply with respect to information received under these Regulations and under the Act as applied by these Regulations as they apply with respect to information received under the Act as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of the Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348(2), for “In this Part” there were substituted “ In sections 348, 349 and 352 as applied by the Data Reporting Services Regulations 2017 ”;
- (d) 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.

#### Marginal Citations

**M12** Section 348 was 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, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 and [S.I. 2016/1239](#). Section 349 was 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](#), 2007/1093 and 2011/1043. Section 352 was amended by paragraph 54 of Schedule 26 to the [Criminal Justice Act 2003 \(c.44\)](#).

#### Application of Part 25 of the Act (injunctions and restitution)

**36.—**(1) Part 25 of the Act <sup>M13</sup> (injunctions and restitution) applies for the purposes of these Regulations and the Act as applied by these Regulations, with the following modifications.

- (2) Part 25 of the Act applies as if—
  - (a) each reference to the Act included a reference to these Regulations;
  - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;

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- (c) each reference to a regulator, the regulator concerned or the appropriate regulator were a reference to the FCA;
  - (d) references to the Secretary of State were omitted;
  - (e) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, or the Act as applied by these Regulations.
- (3) Section 380 of the Act (injunctions) applies as if subsections (6) to (12) were omitted.
  - (4) Section 381 of the Act (injunctions in cases of market abuse) does not apply.
  - (5) Section 382 of the Act (restitution orders) applies as if subsections (9) to (15) were omitted.
  - (6) Section 383 of the Act (restitution orders in cases of market abuse) does not apply.
  - (7) Section 384 of the Act (power of FCA or PRA to require restitution) applies as if—
    - (a) subsections (2) and (3) and references to those subsections were omitted;
    - (b) subsections (7) to (13) were omitted.

#### Marginal Citations

**M13** Part 25 was amended by paragraphs 19, 21, 23, 24 and 25 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2015/1755, 2016/225 and 680. There are other amendments but none is relevant.

#### Application of Part 26 of the Act (notices)

**37.**—(1) Part 26 of the Act <sup>M14</sup> (notices) applies with respect to the giving of notices under these Regulations and under the Act as applied by these Regulations as it applies with respect to the giving of notices under the Act, with the following modifications.

- (2) Part 26 of the Act applies as if—
  - (a) each reference to the Act included a reference to these Regulations;
  - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
  - (c) each reference to a regulator or to the regulator concerned were a reference to the FCA;
  - (d) references to the PRA were omitted.
- (3) Section 387 of the Act (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (4) Section 388 of the Act (decision notices) applies as if subsections (1A) and (2) were omitted.
- (5) Section 391 of the Act (publication) applies as if—
  - (a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) were to a warning notice given under regulation 25;
  - (b) in subsection (1ZA) the reference to a warning notice not falling within subsection (1ZB) were to a warning notice given under any other provision of these Regulations or under the Act as applied by these Regulations;
  - (c) subsection (1ZB) were omitted;
  - (d) in subsection (4A) the reference to sections 391A, 391B and 391C were omitted;
  - (e) subsections (5A), (6A), (8A), (8B) and (8C) were omitted;
  - (f) for subsection (11) there were substituted—
    - “(11) Section 425A <sup>M15</sup> (meaning of “consumers”) applies for the purposes of this section as if—

*Status: Point in time view as at 03/07/2017.*

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- (a) subsection (2)(c) were omitted;
  - (b) for subsection (3) there were substituted—
    - “(3) The services within this subsection are data reporting services within the meaning of the Data Reporting Services Regulations 2017.”;
  - (c) subsection (7) were omitted.”.
- (6) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive) and 391C (publication: special provisions relating to the UCITS directive) of the Act do not apply.
- (7) Section 392 of the Act (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—
- “(a) a warning notice given in accordance with—
    - (i) regulation 11(4)(a) of the Data Reporting Services Regulations 2017 (including that provision as applied by regulation 8),
    - (ii) regulation 25 of those Regulations, or
    - (iii) section 385 as applied by those Regulations;
  - (b) a decision notice given in accordance with—
    - (i) regulation 11(5)(b)(i) of those Regulations (including that provision as applied by regulation 8),
    - (ii) regulation 26 of those Regulations, or
    - (iii) section 386 as applied by those Regulations.”.
- (8) Section 395 of the Act (the FCA's and PRA's procedures) applies as if—
- (a) for subsection (1) 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) a supervisory notice, warning notice or decision notice; or
      - (b) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”;
  - (b) in subsection (2)(a) for “any of paragraphs (a) to (c)” there were substituted “ paragraph (a) ”;
  - (c) in subsection (2)(b) for “(d)” there were substituted “ (b) ”;
  - (d) in subsection (2)(c)—
    - (i) for “(d)” there were substituted “ (b) ”;
    - (ii) for “(b) or (c)” there were substituted “ (a) ”;
  - (e) subsections (3)(b) and (4) were omitted;
  - (f) in subsection (9) “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)” were omitted;
  - (g) subsection (9A) were omitted;
  - (h) for subsection (13) there were substituted—
    - “(13) “Supervisory notice” means a notice given in accordance with section 55Y of the Act <sup>M16</sup> as applied by regulation 22 of the Data Reporting Services Regulations 2017.”.
- (9) In paragraph (1), “notices under these Regulations” does not include a notice under—

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- (a) regulation 8(3) or (6)(a);
- (b) regulation 10(6)(a) or (9)(a);
- (c) regulation 11(5)(a) (including that provision as applied by regulation 8).

#### Marginal Citations

**M14** Part 26 was 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, paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016, [S.I. 2005/381](#), 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22, 2010/747, 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715 and 2016/1239. There are other amendments but none is relevant.

**M15** [Section 425A](#) was inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010 and amended by [S.I. 2013/655](#) and 2013/3115.

**M16** [Section 55Y](#) was inserted by section 11 of the Financial Services Act 2012.

#### Application of Part 27 of the Act (offences)

**38.**—(1) Part 27 of the Act<sup>M17</sup> (offences) applies with respect to offences under these Regulations and the Act as applied by these Regulations as it applies with respect to offences under the Act, with the following modifications.

(2) Part 27 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
- (c) references to the Secretary of State were omitted;
- (d) references to the appropriate regulator were references to the FCA.

(3) Sections 398 (misleading the FCA or PRA: residual cases) and 399 (misleading the CMA) of the Act do not apply.

(4) Section 400 of the Act (offences by bodies corporate) applies as if subsection (6A) were omitted.

(5) Section 401 of the Act (proceedings for offences) applies as if—

- (a) subsection (1)(c) were omitted;
- (b) subsections (3A), (3AB) and (3B) were omitted.

(6) Section 402 of the Act (power of FCA to institute proceedings for certain other offences) does not apply.

(7) Section 403(7) of the Act (jurisdiction and procedure in respect of offences) applies as if the words from “or an offence” to the end were omitted.

#### Marginal Citations

**M17** Part 27 was amended by section 95 of and paragraphs 37, 38 and 40 of Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1881](#) and 2016/1239. There are other amendments but none is relevant.

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### Application of section 413 of the Act (protected items)

39. Section 413 of the Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of the Act.

### FCA: penalties, fees and exemption from liability in damages

40.—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages) of Schedule 1ZA to the Act<sup>M18</sup> apply with respect to the discharge by the FCA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

- (2) Those paragraphs apply as if—
  - (a) each reference to penalties imposed under the Act included a reference to penalties imposed under these Regulations;
  - (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
  - (c) each reference to the functions of the FCA included a reference to its functions under these Regulations.
- (3) Paragraph 20 applies as if references to the FCA's enforcement powers included—
  - (a) its powers under these Regulations and under Part 25 of the Act as applied by these Regulations;
  - (b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by these Regulations;
  - (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under these Regulations or under the Act as applied by these Regulations.
- (4) Paragraph 21 applies as if regulated persons included data reporting service providers.
- (5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations and under the Act as applied by these Regulations.

#### Marginal Citations

**M18** [Schedule 1ZA](#) was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

## CHAPTER 3

### Application of secondary legislation for the purposes of the Regulations

#### Service of notices

41. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001<sup>M19</sup> (“Notice Regulations”) apply in respect to any notice or document to be given by the FCA under these Regulations or under the Act as applied by these Regulations, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;
- (b) each reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations;



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- (c) each reference to a section of the Act were a reference to that section as applied by these Regulations.

**Marginal Citations**

M19 [S.I. 2001/1420](#).

**Disclosure of confidential information**

42. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001<sup>M20</sup> apply for the purposes of section 349 of the Act (exceptions from section 348) as applied by regulation 35.

**Marginal Citations**

M20 [S.I. 2001/2188](#).

**Communications by auditors**

43. The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001<sup>M21</sup> apply with respect to the auditor of a data reporting service provider, as if—

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) in regulation 1(2) (citation, commencement and interpretation) “relevant requirement” meant a requirement which is imposed by or under these Regulations;
- (c) in regulation 2(2)(a)(ii) (circumstances in which an auditor is to communicate) the reference to functions were a reference to the FCA's functions under these Regulations and under the Act as applied by these Regulations;
- (d) in regulation 2(2)(b) the reference to threshold conditions were a reference to the conditions in regulation 9 of these Regulations.

**Marginal Citations**

M21 [S.I. 2001/2587](#).

**Status:**

Point in time view as at 03/07/2017.

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