

**2017 No. 699**

**FINANCIAL SERVICES AND MARKETS**

**The Data Reporting Services Regulations 2017**

*Made* - - - - *21st June 2017*

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*Coming into force in accordance with regulation 1(2)*

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The Treasury are a government department designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, make the following Regulations:

## PART 1

### Introductory Provisions

#### Citation and commencement

- 1.—(1) These Regulations may be cited as the Data Reporting Services Regulations 2017.
- (2) These Regulations come into force—
- (a) on 3rd July 2017 for the purposes of—
    - (i) enabling applications to be made and determined under regulations 7 and 8;
    - (ii) enabling the FCA to give guidance under regulation 20;
    - (iii) enabling the FCA to prepare and issue a statement of policy under regulation 27;
    - (iv) regulations 19 (co-operation), 29 (offence of misleading the FCA), 33 (application of Part 11 of the Act: information gathering and investigations), 35 (restrictions on disclosure of information), 37 (application of Part 26 of the Act: notices), 38 (application of Part 27 of the Act: offences) and 42 (disclosure of confidential information); and
    - (v) regulation 40 (penalties, fees and exemption from liability in damages) in so far as it relates to a matter referred to in paragraph (i), (ii), (iii) or (iv);
  - (b) for all other purposes on 3rd January 2018.

#### Interpretation

- 2.—(1) In these Regulations—
- “the Act” means the Financial Services and Markets Act 2000<sup>(c)</sup>;
- “APA” means a person authorised under regulation 10 to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of the markets in financial instruments regulation;
- “ARM” means a person authorised under regulation 10 to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;
- “authorised person” has the meaning given in section 31(2) of the Act;
- “credit institution” has the meaning given in Article 4.1.27 of the markets in financial instruments directive;
- “CTP” means a person authorised under regulation 10 to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of the markets in financial instruments regulation from regulated markets, multilateral trading

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(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c.8.

facilities, organised trading facilities and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“data reporting service” means—

- (a) the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of the markets in financial instruments regulation;
- (b) the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms; or
- (c) the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of the markets in financial instruments regulation from regulated markets, multilateral trading facilities, organised trading facilities and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“data reporting service provider” means an APA, an ARM or a CTP;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)(a);

“the FCA” means the Financial Conduct Authority;

“financial instrument” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;

“home Member State” has the meaning given in Article 4.1.55(c) of the markets in financial instruments directive;

“investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive, but does not include a person to whom that directive does not apply by virtue of Article 2 of that directive;

“management body” in relation to a data reporting service provider means—

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the data reporting service provider; and
- (b) any other person who effectively directs the business of the provider;

“the markets in financial instruments directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast)(b);

“the markets in financial instruments regulation” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments(c);

“multilateral trading facility” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;

“organised trading facility” has the meaning given in Article 4.1.23 of the markets in financial instruments directive;

“overseas clearing house” and “overseas investment exchange” have the meanings given in section 313(1) of the Act(d);

“the PRA” means the Prudential Regulation Authority;

“PRA-authorized person” has the meaning given in section 2B(5) of the Act(e);

“recognised body” has the meaning given in section 313(1) of the Act, but does not include—

- (a) an overseas investment exchange, or

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(a) OJ no L331, 15/12/2010, p84.

(b) OJ no L173, 12/6/2014, p349.

(c) OJ no L173, 12/6/2014, p84.

(d) Section 313(1) was amended by S.I. 2013/504. There are other amendments but none is relevant.

(e) Section 2B was inserted by section 6 of the Financial Services Act 2012 (c.21).

(b) an overseas clearing house;

“recognised clearing house” has the meaning given in section 285(1)(b) of the Act<sup>(a)</sup> but does not include an overseas clearing house;

“recognised CSD” means a legal person established in the United Kingdom who is authorised by the Bank of England for the purposes of Article 16 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories<sup>(b)</sup>;

“recognised investment exchange” has the meaning given in section 285(1)(a) of the Act, but does not include an overseas investment exchange;

“recognition order” has the meaning given in section 313(1) of the Act;

“register” means the register maintained by the FCA under regulation 6;

“regulated market” has the meaning given in Article 4.1.21 of the markets in financial instruments directive;

“senior management” has the meaning given in Article 4.1.37 of the markets in financial instruments directive;

“systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;

“trading venue” has the meaning given in Article 4.1.24 of the markets in financial instruments directive;

“the Tribunal” means the Upper Tribunal;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(c)</sup> in any part of the United Kingdom.

(2) In this regulation, a “person authorised under regulation 10” includes a person whose compliance with Title V of the markets in financial instruments directive has been verified by the FCA under regulation 8.

(3) For the purposes of these Regulations, a person is established in the United Kingdom if it is—

(a) a natural person and its head office is situated in the United Kingdom; or

(b) a body corporate and its registered office is situated in the United Kingdom.

### **CTP definition and conditions**

**3.**—(1) The following definitions in regulation 2(1) apply as if they do not include reference to Articles 10 and 21 of the markets in financial instruments regulation until 3rd September 2019—

(a) the definition of “CTP”, and

(b) paragraph (c) of the definition of “data reporting service”.

(2) The conditions for a CTP in regulation 15 apply as if paragraphs (5) to (8) were not included until 3rd September 2019.

### **Directly applicable EU regulations**

**4.**—(1) In these Regulations, a reference to an Article of the markets in financial instruments regulation includes a reference to any directly applicable EU regulation made under that Article.

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(a) Section 285(1) was amended by S.I. 2013/504.

(b) OJ No L257, 28.8.2014, p1.

(c) 1971 c.80. Schedule 1 was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2). There are other amendments but none is relevant.

(2) In Parts 4 and 5 any reference to a requirement imposed by or under these Regulations includes a reference to a requirement imposed on a person to whom these Regulations apply under—

- (a) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation; and
- (b) the markets in financial instruments regulation.

## PART 2

### Authorisation of Data Reporting Services

#### **Prohibition on provision of data reporting service**

**5.—**(1) A person must not provide a data reporting service in the United Kingdom as a regular occupation or business unless the person is—

- (a) acting in accordance with an authorisation to provide a data reporting service granted under these Regulations;
- (b) an investment firm which is operating a multilateral trading facility or an organised trading facility where the FCA has verified in accordance with Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive;
- (c) a credit institution which is operating a multilateral trading facility or an organised trading facility where the FCA has verified in accordance with Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive;
- (d) a recognised investment exchange operating a trading venue where the FCA has verified in accordance with Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive; or
- (e) a person who is—
  - (i) established in an EEA State other than the United Kingdom; and
  - (ii) authorised in its home Member State in accordance with Title V of the markets in financial instruments directive or is permitted to provide a data reporting service in accordance with Article 59.2 of that directive.

(2) A person who breaches this regulation is to be taken to have contravened a requirement imposed on it under these Regulations.

#### **Register of data reporting service providers**

**6.—**(1) The FCA must maintain a register of all persons—

- (a) it has authorised to provide a data reporting service under these Regulations, or
- (b) whose compliance with Title V of the markets in financial instruments directive it has verified in accordance with Article 59.2 of that directive.

(2) The FCA must—

- (a) publish the register online and make it available for public inspection;
- (b) ensure that the register contains information on the services which persons on the register are authorised to provide; and
- (c) update the register on a regular basis.

#### **Application for authorisation to provide a data reporting service**

**7.—**(1) An application for authorisation to provide a data reporting service must be made to the FCA and contain, or be accompanied by, all the information required to demonstrate that the

applicant meets the obligations under these Regulations for the data reporting service the applicant wishes to provide.

(2) An application made under paragraph (1) must be made in such manner as the FCA may direct.

(3) At any time after receiving an application and before determining it the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The FCA may give different directions, and may impose different requirements, in relation to different applications or categories of application.

(5) The information referred to in paragraph (1) must be provided in accordance with any regulatory technical standards and implementing technical standards adopted by the European Commission under Article 61.4 or 61.5 of the markets in financial instruments directive.

### **Application for verification of compliance with Title V of the markets in financial instruments directive**

**8.**—(1) Regulation 7 applies to an application in accordance with Article 59.2 of the markets in financial instruments directive to the FCA for verification of compliance with Title V of that directive as it applies to an application for authorisation to provide a data reporting service.

(2) Where the FCA verifies that an investment firm, credit institution or recognised investment exchange complies with Title V of the markets in financial instruments directive, it must record the data reporting service to which the verification relates—

- (a) in the case of an investment firm or a credit institution (including a PRA-authorized person), in the firm's permission under Part 4A of the Act; and
- (b) in the case of a recognised investment exchange, in the exchange's recognition order.

(3) If the FCA decides to verify that an investment firm, credit institution or recognised investment exchange complies with Title V of the markets in financial instruments directive, it must give the applicant notice of its decision specifying the data reporting services the verification relates to.

(4) The notice must state the date on which the verification takes effect.

(5) If the FCA proposes to refuse an application, it must give the applicant a warning notice.

(6) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it decides to grant the application, give the applicant notice of its decision complying with paragraphs (3) and (4); or
- (b) if it refuses the application, give the applicant a decision notice.

(7) If the FCA decides to refuse the application, the applicant may refer the matter to the Tribunal.

(8) The FCA must notify ESMA of every verification under paragraph (2).

(9) Regulation 11 applies to a verification under paragraph (2) as it applies to an authorisation to provide a data reporting service, as if for paragraph (1) there were substituted—

“(1) The FCA may cancel a person's verification under regulation 8(2)—

- (a) where the person no longer complies with Title V of the markets in financial instruments directive, or
- (b) where the person requests, or consents to, the cancellation of the verification.”.

(10) Regulation 12(1) to (8) applies to a verification under paragraph (2) as it applies to an authorisation to provide a data reporting service.

(11) Where the FCA cancels or varies a verification under paragraph (2)—

- (a) in the case of an investment firm or a credit institution (including a PRA-authorized person), it must amend the firm's permission under Part 4A of the Act accordingly; and

- (b) in the case of a recognised investment exchange, it must amend the exchange's recognition order accordingly.

### **Conditions for authorisation to provide a data reporting service**

**9.**—(1) The FCA may only grant an application for authorisation to provide a data reporting service if—

- (a) the applicant has complied with all directions and requirements under regulation 7;
- (b) the applicant is established in the United Kingdom, or, in the case of an applicant the head office of which is not located in the European Union, the applicant has established a branch in the United Kingdom;
- (c) the FCA is satisfied that the applicant complies with all the requirements of—
  - (i) these Regulations,
  - (ii) the markets in financial instruments regulation,
  - (iii) the directly applicable EU regulations made under the markets in financial instruments directive or the markets in financial instruments regulation, applicable to the applicant; and
- (d) the FCA is satisfied that the persons who effectively direct the business of the applicant are of sufficiently good repute.

(2) In this regulation, “branch” means a place of business other than the head office which is part of the applicant, which has no legal personality and which provides a data reporting service.

### **Determination of an application for authorisation to provide a data reporting service**

**10.**—(1) The FCA must determine an application for an authorisation to provide a data reporting service before the end of the period of six months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it is appropriate to do so.

(3) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) The FCA may grant authorisation to carry out the data reporting services to which the application relates or such of them as may be specified in the authorisation.

(5) The FCA may, subject to paragraphs (8) and (9), grant authorisation subject to the imposition of such restrictions on the applicant, taking effect from the grant of authorisation, as it considers appropriate.

(6) If the FCA decides to grant an application for authorisation, it must give the applicant notice of its decision specifying—

- (a) which data reporting services the applicant has been granted authorisation to provide; and
- (b) any restrictions imposed under paragraph (5),

described in such manner as the FCA considers appropriate.

(7) The notice must state the date on which the authorisation takes effect.

(8) If the FCA proposes to—

- (a) impose a restriction on the applicant; or
- (b) refuse an application,

it must give the applicant a warning notice.

(9) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it decides to grant authorisation without imposing restrictions, give the applicant notice of its decision complying with paragraphs (6) and (7);



- (b) if it decides to grant authorisation subject to the imposition of restrictions on the applicant, give the applicant a decision notice; or
- (c) if it refuses the application, give the applicant a decision notice.

(10) If the FCA decides to—

- (a) grant authorisation subject to the imposition of restrictions on the applicant; or
- (b) refuse the application,

the applicant may refer the matter to the Tribunal.

(11) The FCA must notify ESMA of every authorisation it grants.

### **Cancellation of an authorisation to provide a data reporting service**

**11.**—(1) The FCA may cancel a person’s authorisation to provide a data reporting service and remove the person from the register where—

- (a) the person does not provide any of the data reporting services which the person is authorised to provide within 12 months beginning with the date on which the authorisation took effect;
- (b) the person requests, or consents to, the cancellation of the authorisation;
- (c) the person has provided no data reporting service for the preceding six months;
- (d) the person has obtained the authorisation through false statements or other irregular means;
- (e) the person no longer meets the conditions under which the authorisation was granted;
- (f) the person is not established in the United Kingdom;
- (g) the FCA is not satisfied the persons who effectively direct the business of the person are of sufficiently good repute;
- (h) the person has seriously and systematically infringed the provisions of—
  - (i) these Regulations,
  - (ii) the markets in financial instruments directive,
  - (iii) the markets in financial instruments regulation,
  - (iv) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) A request made under paragraph (1)(b) must be made in such manner as the FCA may direct.

(3) The FCA may refuse a request under paragraph (1)(b).

(4) The FCA must give a person a warning notice where the FCA proposes—

- (a) to cancel a person’s authorisation, other than at the person’s request, or
- (b) to refuse a request under paragraph (1)(b).

(5) The FCA must, having considered any representations made in response to the warning notice—

- (a) give the person notice of its decision if it decides—
  - (i) not to cancel the authorisation, or
  - (ii) to agree the request under paragraph (1)(b); or
- (b) give the person a decision notice if it decides—
  - (i) to cancel the authorisation, or
  - (ii) to refuse the request under paragraph (1)(b).

(6) The person may refer the matter to the Tribunal if the FCA decides—

- (a) to cancel the authorisation, other than at the person’s request, or
- (b) to refuse the request under paragraph (1)(b).

(7) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

### **Variation of an authorisation to provide data reporting services**

**12.**—(1) A data reporting service provider may apply to the FCA to vary its authorisation to enable it to provide one or more additional data reporting services or to remove one or more data reporting services (“an application for a variation”).

(2) An application for a variation must be made in such manner as the FCA may direct.

(3) If the FCA proposes to refuse a person’s application for a variation it must give the person a warning notice.

(4) If the FCA, having considered any representations made in response to the warning notice, refuses a person’s application for a variation, it must give the person a decision notice.

(5) If the FCA, having considered any representations made in response to the warning notice, decides to grant a person’s application for a variation, it must give the person notice of its decision.

(6) If the FCA refuses a person’s application for a variation the person may refer the matter to the Tribunal.

(7) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

(8) The FCA may wholly or partly cancel a variation of a person’s authorisation where the person requests, or consents to, the cancellation.

(9) In this regulation, “authorisation” means an authorisation under regulation 10.

## **PART 3**

### **Operating Requirements**

#### **Requirements for the management body of a data reporting service provider**

**13.**—(1) The following requirements apply in respect of the management body of a data reporting service provider—

- (a) the management body must possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting service provider;
- (b) the members of the management body must—
  - (i) be of sufficiently good repute;
  - (ii) possess sufficient knowledge, skill and experience, and commit sufficient time, to perform their duties; and
  - (iii) act with honesty, integrity and independence of mind—
    - (aa) to effectively challenge the decisions of the senior management where necessary; and
    - (bb) to effectively oversee and monitor management decision-making where necessary;
- (c) the management body must—
  - (i) define and oversee the implementation of governance arrangements of the data reporting service provider to ensure the effective and prudent management of the provider including the segregation of duties in the provider and the prevention of conflicts of interest;
  - (ii) when doing so act in a manner that promotes the integrity of the financial markets and the interests of its clients.

(2) In paragraph (1), “data reporting service provider” includes an applicant for authorisation under regulation 10.

(3) Where—

(a) an applicant for authorisation under regulation 10 is a recognised investment exchange; and

(b) the management body of the applicant is the same as the management body of the exchange,

the requirements in paragraph (1)(a) and (b) are deemed to be met.

### **Conditions for an APA**

**14.**—(1) An APA must have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of the markets in financial instruments regulation in as close to real time as is technically possible on a reasonable commercial basis.

(2) The information mentioned in paragraph (1) must be made available by the APA free of charge 15 minutes after the APA has first published it.

(3) The APA must be able to efficiently and consistently disseminate the information referred to in paragraph (1)—

(a) in a way which ensures fast access to the information on a non-discriminatory basis; and

(b) in a format that facilitates the consolidation of the information with similar data from other sources.

(4) The information mentioned in paragraph (1) must include the following details—

(a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a systematic internaliser, the code ‘SI’ or, otherwise, ‘OTC’; and

(h) if applicable, an indicator that the transaction was subject to specific conditions.

(5) An APA must—

(a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;

(b) have sound security mechanisms in place designed to—

(i) guarantee the security of the means of the transfer of information;

(ii) minimise the risk of data corruption and unauthorised access; and

(iii) prevent information leakage before publication;

(c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and

(d) have systems which can effectively—

(i) check trade reports for completeness;

(ii) identify omissions and obvious errors; and

(iii) request re-transmission of any erroneous reports.

(6) An APA which is also a recognised investment exchange or an investment firm must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

- (7) An APA must meet its obligations under this regulation in accordance with—
- (a) regulatory technical standards adopted by the European Commission under Article 64.6 and 64.8 of the markets in financial instruments directive; and
  - (b) delegated acts adopted by the European Commission under Article 64.7 of that directive.

### **Conditions for a CTP**

- 15.**—(1) A CTP must have adequate policies and arrangements in place to—
- (a) collect the information made public in accordance with Articles 6 and 20 of the markets in financial instruments regulation;
  - (b) consolidate that information into a continuous electronic data stream; and
  - (c) make that information available to the public in as close to real time as is technically possible on a reasonable commercial basis.
- (2) The information mentioned in paragraph (1) must be made available by the CTP free of charge 15 minutes after the CTP has first published it.
- (3) The CTP must be able to efficiently and consistently disseminate the information referred to in paragraph (1) in a way which—
- (a) ensures fast access to the information on a non-discriminatory basis; and
  - (b) is in a format that is easily accessible and utilisable for market participants.
- (4) The information mentioned in paragraph (1) must include the following details—
- (a) the identifier of the financial instrument;
  - (b) the price at which the transaction was concluded;
  - (c) the volume of the transaction;
  - (d) the time of the transaction;
  - (e) the time the transaction was reported;
  - (f) the price notation of the transaction;
  - (g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a systematic internaliser, the code ‘SI’ or, otherwise, ‘OTC’;
  - (h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;
  - (i) if applicable, an indicator that the transaction was subject to specific conditions; and
  - (j) if the obligation to make public the information referred to in Article 3.1 of the markets in financial instruments regulation was waived in accordance with Article 4.1(a) or (b) of that regulation, a flag to indicate which of those waivers the transaction was subject to.
- (5) A CTP must have adequate policies and arrangements in place to—
- (a) collect the information made public in accordance with Articles 10 and 21 of the markets in financial instruments regulation;
  - (b) consolidate that information into a continuous electronic data stream; and
  - (c) make that information available to the public in as close to real time as is technically possible on a reasonable commercial basis.
- (6) The information mentioned in paragraph (5) must be made available by the CTP free of charge 15 minutes after the CTP has first published it.
- (7) The CTP must be able to efficiently and consistently disseminate the information referred to in paragraph (5) in a way which—
- (a) ensures fast access to the information on a non-discriminatory basis; and
  - (b) is in a generally accepted format that is interoperable, easily accessible and utilisable for market participants.
- (8) The information mentioned in paragraph (5) must include the following details—

- (a) the identifier or identifying features of the financial instrument;
  - (b) the price at which the transaction was concluded;
  - (c) the volume of the transaction;
  - (d) the time of the transaction;
  - (e) the time the transaction was reported;
  - (f) the price notation of the transaction;
  - (g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a systematic internaliser, the code 'SI', or otherwise, 'OTC'; and
  - (h) if applicable, an indicator that the transaction was subject to specific conditions.
- (9) A CTP must ensure that the data it makes available publicly is consolidated—
- (a) from all regulated markets, multilateral trading facilities, organised trading facilities and APAs; and
  - (b) for the financial instruments,

specified in regulatory technical standards adopted by the European Commission under Article 65.8(c) of the markets in financial instruments directive.

- (10) A CTP must—
- (a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;
  - (b) have sound security mechanisms in place designed to—
    - (i) guarantee the security of the means of the transfer of information; and
    - (ii) minimise the risk of data corruption and unauthorised access; and
  - (c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times.
- (11) A recognised investment exchange or an APA which is also a CTP must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.
- (12) A CTP must meet its obligations under this regulation in accordance with—
- (a) regulatory technical standards adopted by the European Commission under Article 65.6 and 65.8 of the markets in financial instruments directive; and
  - (b) delegated acts adopted by the European Commission under Article 65.7 of that directive.

### **Conditions for an ARM**

**16.—**(1) An ARM must have adequate policies and arrangements in place to provide the service to an investment firm of reporting the information required from that firm under Article 26 of the markets in financial instruments regulation as quickly as possible and no later than 11.59pm on the working day following the day on which the transaction took place.

(2) The information mentioned in paragraph (1) must be reported in accordance with Article 26 of the markets in financial instruments regulation.

- (3) An ARM must—
- (a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;
  - (b) have sound security mechanisms in place designed to—
    - (i) guarantee the security and authentication of the means of the transfer of information;
    - (ii) minimise the risk of data corruption and unauthorised access;
    - (iii) prevent information leakage; and
    - (iv) maintain the confidentiality of the data at all times;

- (c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and
- (d) have systems which—
  - (i) effectively check transaction reports for completeness;
  - (ii) identify omissions and obvious errors caused by the investment firm;
  - (iii) communicate details of such omissions or errors to the investment firm and request re-transmission of erroneous reports;
  - (iv) detect omissions or errors caused by the ARM itself; and
  - (v) enable the ARM to correct and transmit, or retransmit, correct and complete transaction reports to the FCA.

(4) An ARM which is also a recognised investment exchange or an investment firm must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

(5) An ARM must meet its obligations under this regulation in accordance with regulatory technical standards adopted by the European Commission under Article 66.5 of the markets in financial instruments directive.

## 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>(a)</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.

#### **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.

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(a) 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).

## 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—

- (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>(a)</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>(b)</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>(c)</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>(d)</sup> (investigations etc. in support of overseas regulator) as applied by regulation 33 in relation to a recognised clearing house or a recognised CSD.

## 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.

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(a) Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.

(b) Section 166A was inserted by paragraph 6 of Schedule 12 to the Financial Services Act 2012.

(c) Section 167(1) was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and S.I. 2007/126.

(d) Section 169(1) was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

(3) Section 139B of the Act(a) (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.

### **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
- (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(b) (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;

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(a) 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.

(b) Section 55Y was inserted by section 11 of the Financial Services Act 2012.



- (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.

*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>(a)</sup> (third party rights) (as applied by regulation 37).

### **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.

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

### **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.

## **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 (a) (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;

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(a) 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.

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

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

**33.**—(1) Part 11 of the Act(a) (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—

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(a) 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.

“(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
- (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;

(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.

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

### **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(b) apply with respect to information

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- (a) 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.
  - (b) 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

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.

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

**36.**—(1) Part 25 of the Act(a) (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;
- (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.

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

**37.**—(1) Part 26 of the Act(b) (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.

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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).

- (a) 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.
- (b) 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,



- (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(a) (meaning of “consumers”) applies for the purposes of this section as if—

    - (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—

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2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715 and 2016/1239. There are other amendments but none is relevant.

- (a) 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.

- (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(a) 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—
  - (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).

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

**38.**—(1) Part 27 of the Act(b) (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.

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(a) Section 55Y was inserted by section 11 of the Financial Services Act 2012.

(b) 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.

(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.

### **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>(a)</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.

## **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>(b)</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;
- (c) each reference to a section of the Act were a reference to that section as applied by these Regulations.

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(a) 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.

(b) S.I. 2001/1420.

### **Disclosure of confidential information**

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

### **Communications by auditors**

**43.** The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001(b) 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.

## **PART 5**

### **Miscellaneous**

#### **Record keeping**

**44.—**(1) A data reporting service provider must maintain records in retrievable and legible form of information that could be relevant to demonstrating its compliance or non-compliance with any requirement imposed by or under these Regulations applicable to it.

(2) A data reporting service provider must retain the records for no less than five years from the date on which the records were created.

#### **Reporting of infringements**

**45.** A data reporting service provider must have in place effective procedures for its employees to report potential or actual infringements of—

- (a) these Regulations,
- (b) directly applicable EU regulations made under the markets in financial instruments directive or the markets in financial instruments regulation, and
- (c) the markets in financial instruments regulation,

internally through a specific, independent and autonomous channel.

#### **Application to Gibraltar**

**46.** For the purposes of these Regulations a person authorised in Gibraltar to provide a data reporting service in accordance with Title V of the markets in financial instruments directive is deemed to fall within regulation 5(1)(e).

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(a) S.I. 2001/2188.

(b) S.I. 2001/2587.

## **Applications for authorisation and verification: CTP definition and conditions**

**47.**—(1) This regulation applies where before 3rd September 2019 a person wishes to make an application under regulation 7 or 8 in relation to the data reporting service mentioned in paragraph (c) of the definition of “data reporting service” in regulation 2(1) in relation to any financial instrument listed in Article 10 or 21 of the markets in financial instruments directive.

(2) For the purposes of enabling the application to be made under regulation 7 or 8 and determined under regulation 8 or 10, ignore regulation 3.

## **Review**

**48.**—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 2 to 47,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the markets in financial instruments directive<sup>(a)</sup> (which is implemented in part by means of regulations 2 to 47) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision made by regulations 2 to 47,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 3rd July 2017.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

*David Evennett  
Andrew Griffiths*

21st June 2017

Two of the Lords Commissioners of Her Majesty’s Treasury

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Title V of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (OJ no L173, 12/6/2014, p349) (“MiFID 2”).

“Data reporting services” is defined in regulation 2. An approved publication arrangement (“APA”) enables investment firms to meet their obligations to publish trade reports under Articles 20 and 21 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15

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(a) OJ L173, 12/6/2014, p349.

May 2014 on markets in financial instruments (OJ L173, 12/6/2014, p84) (“MiFIR”). The information must initially be published on a reasonable commercial basis and after 15 minutes without charge. An approved reporting mechanism (“ARM”) provides services to investment firms to enable them to meet their transaction reporting obligations. A consolidated tape provider (“CTP”) is a business which collates all the transaction data which must be made available by regulated markets, multilateral trading facilities and organised trading facilities (“trading venues”) and investment firms (as published by APAs) under MiFIR and makes that available to the public as a continuous data stream. That data stream must be made available to the public on a reasonable commercial basis. A business providing APA, ARM or CTP services must be authorised under these Regulations.

Regulation 3 gives effect to Article 93 of MiFID 2 which provides that requirements on CTPs relating to the reporting of non-equity financial instruments do not commence until 3rd September 2019.

Regulation 4 enables the Financial Conduct Authority (“FCA”) to enforce directly applicable requirements imposed on data reporting service providers under MiFIR and directly applicable EU Regulations made under MiFID 2 and MiFIR.

Regulation 5 prohibits the provision of data reporting services except by persons who are—

- authorised under these Regulations;
- EEA data reporting service providers authorised in their home state and who are exercising their right to provide such services in the United Kingdom under Article 60 of MiFID 2; or
- authorised investment firms, credit institutions or recognised investment exchanges (in each case when operating a trading venue) where the FCA has verified that the firm complies with Title V of MiFID 2.

Regulation 6 requires the FCA to keep a register of data reporting service providers.

Regulations 7 to 12 provide for the making of applications for authorisation as a data reporting service provider to the FCA, the information which must be provided with applications, the conditions for authorisation, the process to determine applications, and when authorisations may be cancelled or varied. They also make provision relating to verifications by the FCA for the purposes of Article 59.2 of MiFID 2. Article 59.2 is a derogation from the authorisation requirement for investment firms, credit institutions and recognised investment exchanges operating a trading venue which comply with Title V of that directive.

Part 3 transposes operating conditions set out in Articles 63 to 66 of MiFID 2 for APAs, ARMs and CTPs.

Chapter 1 of Part 4 confers functions and enforcement powers on the FCA, which is designated as the competent authority for the purposes of Title V of MiFID 2. The functions include monitoring of compliance with and enforcement of these Regulations and giving guidance. The FCA may make a statement of public censure, impose financial penalties, and restrict the ability of a data reporting service provider to provide those services. This Chapter also contains criminal offences in respect of a breach of the requirement to be authorised under these Regulations and in respect of misleading the FCA.

Chapters 2 and 3 of Part 4 apply provisions of the Financial Services and Markets Act 2000 (c.8) in respect of the Regulations, including Part 9 (Upper Tribunal hearings and appeals), Part 11 (information gathering and investigations), Part 25 (injunctions and restitution), Part 27 (offences), provisions relating to the disclosure of confidential information and FCA fees, and related secondary legislation.

Regulation 46 provides that data reporting service providers authorised in Gibraltar are to be treated under these Regulations as if they have been authorised in an EEA State other than the United Kingdom.

Regulation 48 requires the Treasury to review these Regulations every five years.

A transposition note setting out how MiFID 2 is transposed into UK law is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published on [www.legislation.gov.uk](http://www.legislation.gov.uk) alongside these Regulations.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.gov.uk](http://www.gov.uk) and is published alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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