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STATUTORY INSTRUMENTS

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**2018 No. 135**

**The Financial Services and Markets Act  
2000 (Benchmarks) Regulations 2018**

**PART 2**

FCA powers over Miscellaneous BM persons

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

**23.**—(1) Part 26<sup>MI</sup> of the Act (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 13 (warning notice);
- (b) subsection (1ZB) were omitted;
- (c) subsection (4A) were omitted; and
- (d) subsections (5A), (6A), (8A), (8B) and (8C) were omitted.

(6) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive), 391C (publication: special provisions relating to the UCITS directive) and 391D (publication: special provisions relating to the markets in financial instruments 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 13 (warning notice) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, or
- (ii) section 385 as applied by those Regulations;

(b) a decision notice given in accordance with—

- (i) regulation 14 (decision notice) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, or
  - (ii) 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; and
  - (h) for subsection (13) there were substituted—
    - “(13) “Supervisory notice” means a notice given in accordance with—
      - (a) section 55Y of the Act as applied by regulation 6 (FCA's power to impose requirements) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018,
      - (b) regulation 34(5), (7) and (10) (procedure for prior recognition of a benchmark administrator located in a third country) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, where the decision falls within regulation 34(5), and
      - (c) regulation 35(5), (7) and (10) (endorsement of benchmarks provided in a third country) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 where the decision falls within regulation 35(5) or (10).”.

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#### **Marginal Citations**

**M1** Part 26 and the relevant sections thereof were amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), S.I. 2005/1433, S.I. 2007/126, S.I. 2007/1973, S.I. 2009/534, **section 13(3)** and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, S.I. 2010/22, **sections 18, 19** and 24 and paragraphs 26, 27, 28, 29, 30, 32, 33 and 34 of Schedule 9(6) and paragraph 8 of Schedule 13 to the Financial Services Act 2012, S.I. 2012/916, **paragraphs 12** and 14 of Schedule 3 to the Financial Services (Banking Reform) Act 2013, S.I. 2013/1388, S.I. 2016/225, S.I. 2016/680, S.I. 2016/1239. There are other amendments but none is relevant.

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, Section 23.