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## STATUTORY INSTRUMENTS

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# 2019 No. 926

## The Proxy Advisors (Shareholders' Rights) Regulations 2019

### PART 3

#### Functions of the FCA in relation to proxy advisors

##### Interpretation of Part

- 7.—(1) In this Part, except in regulations 9 and 10, “relevant requirement” means—
- (a) a requirement imposed by Part 2 of these Regulations;
  - (b) a requirement imposed by regulation 9; or
  - (c) a requirement to give notice under or in accordance with regulation 31 or 32.
- (2) In regulations 9 and 10 “relevant requirement” means—
- (a) a requirement imposed by Part 2 of these Regulations; or
  - (b) a requirement to give notice under or in accordance with regulation 31 or 32.
- (3) In this Part, in relation to a requirement to give notice under or in accordance with regulation 32, a reference to a proxy advisor is a reference to a person who is required to comply with that requirement.

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##### Commencement Information

**I1** Reg. 7 in force at 10.6.2019, see [reg. 1](#)

##### Functions of the FCA

8. The FCA, in discharging the functions conferred on it by this Part or by any provision of the Act applied by Part 4 of these Regulations (as so applied), must have regard to the need to use its resources in the most efficient and economic way.

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##### Commencement Information

**I2** Reg. 8 in force at 10.6.2019, see [reg. 1](#)

##### Notice of inability or failure to comply with a relevant requirement

9.—(1) If, at any time, a proxy advisor considers that it is unable to comply with a relevant requirement, it must as soon as reasonably practicable notify the FCA of that fact and of the reasons why it is unable to comply.

(2) A proxy advisor must immediately notify the FCA of any contravention of a relevant requirement of which the proxy advisor becomes aware.

**Changes to legislation:** The Proxy Advisors (Shareholders' Rights) Regulations 2019, PART 3 is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**Commencement Information**

**I3** Reg. 9 in force at 10.6.2019, see [reg. 1](#)

**Complaints**

**10.** The FCA must maintain arrangements designed to enable any person to submit to it a complaint that a proxy advisor has contravened a relevant requirement.

**Commencement Information**

**I4** Reg. 10 in force at 10.6.2019, see [reg. 1](#)

**Public censure**

**11.** Where the FCA considers that a proxy advisor has contravened a relevant requirement, the FCA may publish a statement to that effect.

**Commencement Information**

**I5** Reg. 11 in force at 10.6.2019, see [reg. 1](#)

**Financial penalties**

**12.—(1)** Where the FCA considers that a proxy advisor has contravened a relevant requirement, the FCA may impose a penalty of such amount as it considers appropriate on the proxy advisor.

**(2)** A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

**Commencement Information**

**I6** Reg. 12 in force at 10.6.2019, see [reg. 1](#)

**Warning notice**

**13.—(1)** Where the FCA proposes to—

- (a) publish a statement in respect of a proxy advisor under regulation 11, or
- (b) impose a penalty on a proxy advisor under regulation 12,

it must give the proxy advisor 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.

**Commencement Information**

**I7** Reg. 13 in force at 10.6.2019, see [reg. 1](#)

## Decision notice

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

- (a) publish a statement under regulation 11 (whether or not in the terms proposed), or
- (b) impose a penalty under regulation 12 (whether or not of the amount proposed),

it must without delay give the proxy advisor 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) Where the FCA decides to—

- (a) publish a statement in respect of a proxy advisor under regulation 11, or
- (b) impose a penalty on a proxy advisor under regulation 12,

the proxy advisor may refer the matter to the Tribunal.

(5) After a statement under regulation 11 is published, the FCA must send a copy of it to—

- (a) the proxy advisor concerned; and
- (b) any person to whom a copy of the decision notice was given under section 393(4) of the Act (third party rights) as applied by section 392 of the Act (application of section 393).

(6) In paragraph (5)(b) the reference to section 392 is a reference to that section as read with the modification made by regulation 26(6).

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### Commencement Information

**18** Reg. 14 in force at 10.6.2019, see [reg. 1](#)

## Matters to which FCA must have regard in relation to imposition of penalties

15. In determining whether to impose a penalty under regulation 12 and the amount of a penalty under that regulation, the FCA must have regard to—

- (a) the gravity and duration of the contravention, including how serious it is in relation to the nature of the requirement contravened;
- (b) the extent to which the contravention was deliberate or reckless;
- (c) the financial strength of the proxy advisor;
- (d) the amount of profit gained or of loss avoided as a result of the contravention, so far as this can be determined;
- (e) the amount of loss sustained as a result of the contravention by any other person, so far as this can be determined;
- (f) the level of co-operation with the FCA given by the proxy advisor (without prejudice to the need to ensure that the proxy advisor accounts for or makes good any profit gained or loss avoided as a result of the contravention);
- (g) any previous contravention by the proxy advisor for which a penalty was, or could have been, imposed under regulation 12; and
- (h) any measures taken by the proxy advisor to prevent a repetition of the contravention.

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**Commencement Information**

**19** Reg. 15 in force at 10.6.2019, see [reg. 1](#)

**Statement of policy on imposition of penalties**

**16.—(1)** The FCA may prepare and issue a statement of policy with respect to the imposition and amount of penalties under regulation 12.

(2) A statement of policy must require the FCA, in determining whether to impose a penalty under regulation 12 and the amount of a penalty under that regulation, to have regard to the matters referred to in regulation 15.

(3) The FCA may, at any time, alter or replace a statement of policy issued under this regulation.

(4) Where a statement of policy is altered or replaced, the FCA must issue the altered statement or the statement by which it is replaced.

(5) The FCA must, without delay, give the Treasury a copy of each statement of policy issued under this regulation and publish that statement, as the statement currently in force, in a manner which appears to the FCA to be best calculated to bring it to the attention of the public.

(6) The FCA may charge a reasonable fee for providing a person with a copy of any statement of policy issued under this regulation.

(7) If the FCA issues a statement of policy under this regulation, paragraph (8) applies in relation to the FCA's exercise, or decision whether to exercise, its power to impose a penalty for the contravention of a relevant requirement, and its determination of the amount of a penalty to be imposed for the contravention.

(8) The FCA must have regard to the statement of policy which was in force at the time of the contravention.

**Commencement Information**

**110** Reg. 16 in force at 10.6.2019, see [reg. 1](#)

**Statement of policy on imposition of penalties: procedure**

**17.—(1)** The FCA must, before issuing a statement under regulation 16 (including an altered statement or a statement by which the statement currently in force is to be replaced), publish a draft of the statement in a manner which appears to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft statement must be published with a notice that representations about the draft may be made to the FCA within a specified time.

(3) The FCA must, in preparing the statement for issue, have regard to any representations made about the draft published under paragraph (2).

(4) On issuing the statement, the FCA must publish an account, in general terms, of any representations made about the draft statement and the FCA's response to those representations.

(5) Where the statement issued differs from the draft statement in any respect which, in the opinion of the FCA, is significant, the FCA must also publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of the draft statement published under paragraph (1).

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**Commencement Information**

**I11** Reg. 17 in force at 10.6.2019, see [reg. 1](#)

**Misleading the FCA**

- 18.**—(1) A person must not provide information to another person—
- (a) knowing or being reckless as to whether the information is false or misleading in a material particular; and
  - (b) knowing that the information is to be provided to, or used for the purpose of providing information to, the FCA in connection with the discharge of any of its functions under these Regulations or under the Act as applied by these Regulations.
- (2) A person who contravenes paragraph (1) is guilty of an offence.
- (3) A person who is 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.

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**Commencement Information**

**I12** Reg. 18 in force at 10.6.2019, see [reg. 1](#)

**Restriction on penalties**

- 19.**—(1) A proxy advisor who is convicted of an offence under section 398(1) of the Act as applied by these Regulations is not subsequently liable to a penalty under regulation 12 in respect of any act or omission that constituted, in whole or in part, the offence.
- (2) A proxy advisor on whom a penalty has been imposed under regulation 12 is not subsequently liable for an offence under section 398(1) of the Act as applied by these Regulations in respect of the contravention for which the penalty was imposed.

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**Commencement Information**

**I13** Reg. 19 in force at 10.6.2019, see [reg. 1](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)